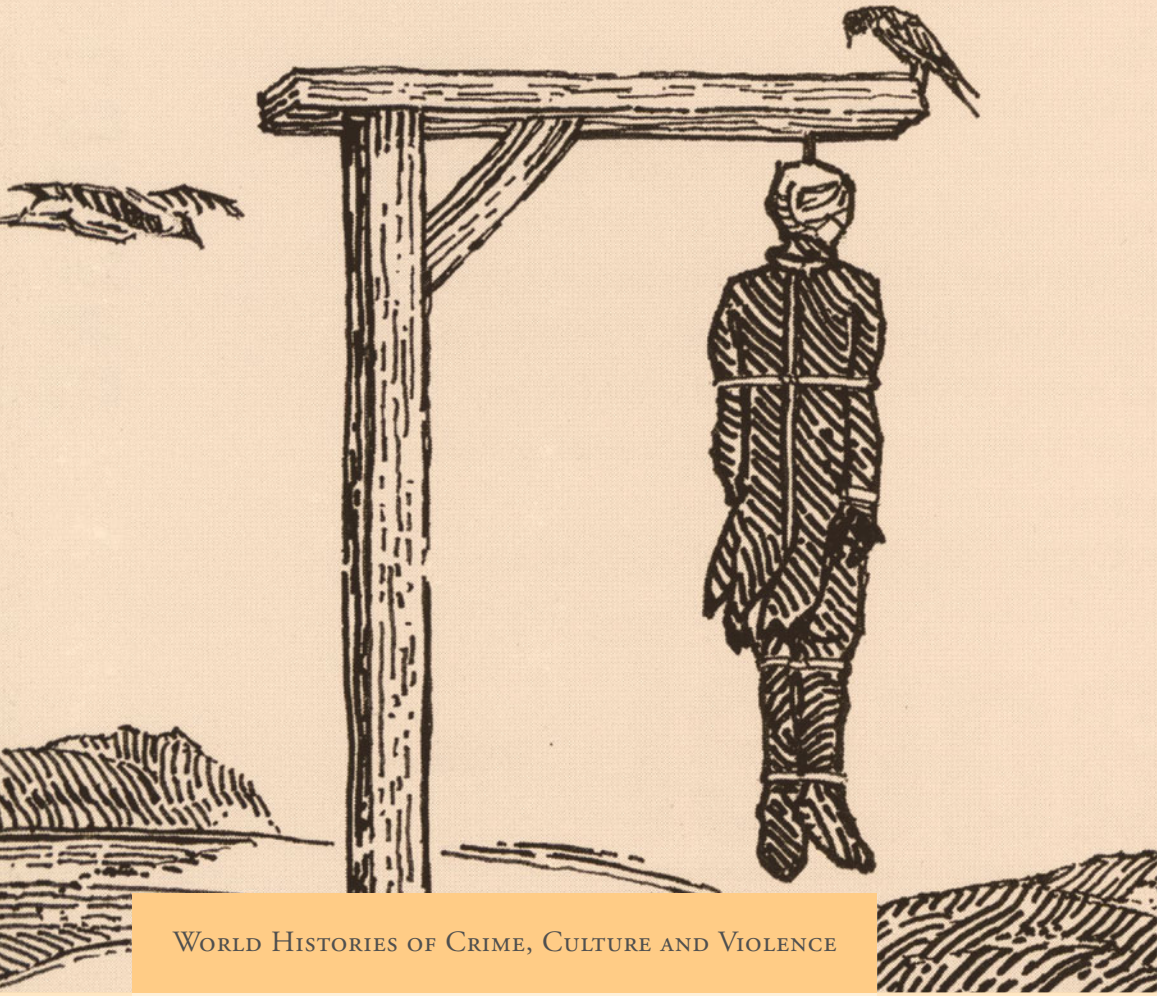

World Histories of Crime, Culture and Violence

THE BLOODY CODE IN ENGLAND AND WALES, 1760–1830

John Walliss

World Histories of Crime, Culture and Violence

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John Walliss

The Bloody Code in England and Wales, 1760–1830

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For my parents, Pat and Gerry Walliss

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A Note on Sources and Methodology

The historian is almost inevitably at the mercy of the primary sources that are available to them, and this is certainly the case when attempting to construct a picture of the administration of justice in Georgian England and Wales. My analysis is based on three main sources: the Crown Books for the English assizes, the gaol files of the Welsh Courts of Great Sessions, and the Criminal Registers for England and Wales.

Initially I had intended to analyse one county from each of the six English assize circuits between 1760 and 1830. However, while the survival rate for the Crown Books for the English assize circuits from the fifteenth century is very good, there are large gaps in the records. For example, although the National Archives holds the Crown Books for the Norfolk Circuit from 1734, there are gaps between 1788 and 1797 and 1800 and 1814.[1] It has also not been possible to include any of the counties comprising the Midland circuit as there are also no extant Crown Books prior to 1818.[2] Consequently, rather than sampling one county from each of the circuits, I sampled one from the Home (Kent), Western (Cornwall), Oxford (Oxford) and Northern (Lancashire) circuits.

Turning to Wales, the three counties that comprised the Brecon Courts of Great Sessions—Breconshire, Glamorganshire and Radnorshire—were selected for analysis, again, based on the extant source material. The main sources for the Courts of Great Sessions are the gaol files held in the National Library of Wales (NLW) and also available via the NLWs online "Crime and Punishment database".[3]

Their availability and relative ease of use has led them to be used widely by historians of crime in Georgian Wales.[4] That said, however, there are some problems with them that must be borne in mind. Primarily, although the records are remarkably well preserved in comparison with some English assize circuits, some of the gaol files are missing. This is particularly the case with ignoramus bills that were usually destroyed, but is also clear that an unknowable number of other gaol files have also been lost. In addition, there are some errors on both the actual files and, in some cases, on the transcribed records. In the gaol files, for example, the prisoner's residence is frequently given as the parish in which the alleged crime took place. Similarly, as is the case with court records from this period, males are often classified as "labourer" or "yeoman" rather than their specific occupation.[5] The date of the crime given in the gaol file may also not be accurate. A more pressing problem is that in a great many cases, sentences are not given in the gaol files.[6] Most of these problems, however, can be overcome by triangulating the gaol files with the so-called Brecon "Black Books". These are the formal record of the Brecon Circuit between 1726 and 1830 (minus a gap between 1737 and 1746), similar to the Crown Books found in the English assize circuits.[7] Again, not all indictments and sentences were recorded in the Black Books, but they do provide information on some indictments not found in the gaol files.

Finally, the Criminal Registers for England and Wales were used to cover the period 1805–1830. These are held at the National Archives, although they have been digitised and are available via a subscription to ancestry.co.uk.[8] Again, there are gaps in some of the information presented in the Criminal Registers, but these can be filled by cross-referencing with other sources. Primarily, partial verdicts are not shown, but these can be ascertained from consulting the Crown Books. Similarly, in the early Criminal Registers—as with the gaol files and Crown Books—there is often no confirmation about whether or not a capitally convicted felon was subsequently executed. This information is available, however, on the extensive online database of executions at capitalpunishmentuk.org, and, in the case of Wales, the annotated list of executions in the province produced by D.J. Mossop in the early 1990s.[9]

These sources were transcribed into the statistical software package SPSS, generating 22,471 cases and twelve key variables: county, year, the period (peacetime or wartime), the sex of the indicted person, the crime for which they were indicted, the crime type (property crime,

crime against the person, or other), whether it was a property crime or crime against the person, the verdict handed down (and whether this was a partial verdict), the sentenced passed and, in the case of capitally convicted felons, whether they were subsequently executed. While some of these variables are self-explanatory, some require a brief clarification. Turning first to the crimes for which persons were indicted, to simplify the analysis these were classified into twenty-six broad crime groups. For example, murder and attempted murder were grouped together as "murder", while the murder of an infant ("murder of bastard", etc.) by its mother was classified as "infanticide". Attempts to steal cattle, cows or heifers were classified as "cattle stealing", while attempts to steal a sheep or lamb, or kill one with the intention of stealing was similarly classified as "sheep stealing". Crimes that were presented as "cutting with intent to murder", "cutting and maiming", "stabbing with intent to murder", "assault" and the like were classified as "stabbing, cutting, wounding and assault", while a distinction was made between, on the one hand, rape and attempted rape, with the latter being classified among "other sexual crimes". Where a person was indicted for one offence but found guilty of another (such as when indicted for burglary or murder but found guilty of the lesser offences of larceny and manslaughter respectively), they were classified under the latter offence and recorded as a partial verdict. Similarly, when a person was indicted for several crimes, they were classified as either the one for which they were found guilty or the most frequent crime listed. So, if a person had been indicted for three counts of larceny and one of sheep stealing and acquitted, (s)he was coded as "larceny". If they had been found guilty of the latter offence, they were coded as "sheep stealing". These are broad categories, and there were cases, such as, for example, an attempted rape that also involved robbery, or where a horse thief shot at his pursuers that could potentially have fitted into two categories. However, in most cases, individuals were indicted for one clear offence that could be easily classified under one of the twenty-six offence groups. The outcomes of each indictment were classified as either "guilty", "not guilty", "no true bill", "no prosecution" or "other". The first four require no explanation, but "other" was used to cover cases where judgment was respited, the person was declared insane, or was discharged on condition of joining the army or navy. The different sentences passed by the courts again require little clarification except in two issues. Where a person was sentenced to receive another punishment alongside a period of imprisonment (such as

being whipped, fined or burned in the hand), the outcome was classified on the basis of the length of the prison term they received. Likewise, "other" referred to sentences such as being whipped, burned in the hand, fined, or branded.

Notes

1. TNA ASSI 33.
2. TNA ASSI 11. In his testimony to the 1819 Select Committee on Criminal Laws, the under-secretary of state for the Home Office, Henry Hobhouse, stated that these had been destroyed three or four years previously in a fire at the lodgings of the clerk of the midland assizes—see Select Committee on Criminal Laws, *Report from the select committee on criminal laws relating to capital punishment in felonies*, 1819, VIII.1, pp. 19–20.
3. For an overview of the records of the Great Sessions, see Glyn Parry, *A guide to the records of the Great Sessions in Wales* (Aberystwyth, The National Library of Wales, 1995); National Library of Wales Crime and Punishment database https://www.llgc.org.uk/sesiwn_fawr/index_s.htm.
4. The database was used extensively by Nicholas Woodward in his series articles on the prosecution of infanticide, burglary sheep stealing and horse stealing at the Great Sessions; see 'Infanticide in Wales, 1730–1830', Welsh History Review, vol. 23, no. 12 (2007), 94–125; 'Burglary in Wales, 1730–1830: Evidence from the Great Sessions', Welsh History Review, vol. 24, no. 2 (2008), 60–91; 'Seasonality and sheep stealing: Wales, 1730–1830', Agricultural History Review, vol. 56, no. 1 (2008), 25–47; 'Horse stealing in Wales, 1730–1830', Agricultural History Review, vol. 57, no. 1 (2009), 70–108. It was also used by Katherine Watson and, more recently, Catherine Horler-Underwood in their respective work on rape and infanticide convictions and female criminality; see Katherine D. Watson, 'Women, violent crime and criminal justice in Georgian Wales', Continuity and Change, vol. 28, no. 2 (2013), 245–72; Catherine Horler-Underwood, 'Aspects of female criminality in Wales, c. 1730–1830: Evidence from the Court of Great Sessions' (PhD thesis, Cardiff University, 2014).
5. John M. Beattie, 'Judicial records and the measurement of crime in eighteenth-century England', in *Crime and criminal justice in Europe and Canada*, ed. by Louis A. Knafla (Waterloo, ON, Wilfred Laurier Press, 1981), 127–45; Robert B. Shoemaker, 'Using quarter sessions records as evidence for the study of crime and criminal justice', Archives, vol. 20, no. 90 (1993), 145–57.
6. For discussions of the problems associated with the records of the Courts of Great Sessions, see, Parry, *A guide to the records of the Great Sessions in*

Wales, pp. iv–clxi; A. A. Powell, 'Crime in Brecknockshire, 1733–1830 as revealed by the records of the Court of Great Sessions' (MA thesis, University of Wales, Cardiff, 1990), Chapter 3; Horler-Underwood, *Op. Cit.*, 1.6.

7. NLW Great Sessions 28/31-6.
8. TNA HO 27/1-37.
9. I would like to thank Richard Clark for providing me with a copy of this list. It is also summarised on his website: http://www.capitalpunishmen-tuk.org/wales.html.

CHAPTER 1

Introduction

Between 1688 and 1820, the number of capital crimes in England and Wales increased exponentially from fifty to over 220. As one leading opponent of capital punishment, Sir Samuel Romilly told the House of Commons in 1810, "there is probably no other country in the world in which so many and so great a variety of human actions are punishable with loss of life as in England".[1] Males and females found themselves facing the gallows having being convicted of crimes ranging from murder, through burglary and housebreaking and horse, cattle and sheep theft to theft of goods over twelve pence. Males were hanged for rape as well as sodomy and buggery and, on occasions, for bestiality. Females were burned at the stake for murdering their husbands (the crime of petit treason) and hanged for falsely impersonating the wife of a seaman in order to claim his pension. Those who fled a sentence of transportation also ran the risk of a capital conviction, as did those who (in)famously had been in the company of gypsies for a month. The list of capital crimes that made up the Bloody Code, as it later came to be known, went on and on: arson, sending a threatening letter, destroying (or even removing without permission parts of) Westminster Bridge.[2] "Every page of our statute book smelt of blood", wrote Charles Phillips almost half a century after Romilly's speech,

> We hanged for everything — for a shilling — for five shillings — for forty shillings — for five pounds — for cutting down a sapling! We hanged for a sheep — for a horse— for cattle — for coining — for forgery — even for

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> witchcraft — for things that were, and things that could not be. [Lord] Coke's 'cursed tree of the gallows,' was planted, and prospered in every county throughout the land; and 'Christian men and women' swung on it, 'thick as the leaves in Vallambrosa.'[3]

In practice however, the Bloody Code, as it subsequently came to be known, was significantly less brutal in practice than Phillips implied. While those convicted of murder more often than not expiated for their crime on the gallows, the majority of those convicted of lesser offences were often pardoned, receiving instead a sentence of transportation or even imprisonment.[4]

To date, the majority of the scholarship on the Bloody Code has revolved around the debate between Marxist historians and others over the extent to which it operated as a tool of the ruling elite to protect property interests. In his 1975 essay "Property, authority and the criminal law", Douglas Hay argued that the Bloody Code played a crucial ideological role during the period, by, on the one hand, legitimising the status quo and maintaining bonds of obedience and deference, and, on the other, protecting private property in the absence of a police force. According to Hay, this occurred through the interaction of three aspects of the law: the *majesty* of the law reinforced through the pomp and ceremony, rituals and regalia of the assizes; the abstract notion of *justice* wherein the law was represented as being objective of human relations and class interests; and, finally, the prerogative of *mercy*, which, by being represented as a form of benevolent grace, served to maintain the spirit of paternalism and deference central to ruling class power.[5]

Eight years later, in his "Albion's Fatal Flaws", John Langbein presented a polemical response to Hay, dismissing the "ruling class conspiracy" that he claimed was at the heart of Hay's thesis. The "little crooks" tried at the English assizes, Langbein averred, were not "class warriors", and to see them as such "one must wear rose-coloured glasses of the deepest hue". While accepting that those on trial were often poor, he argued that so too were the prosecutors; the courts, in other words, were not full of members of the propertied elite prosecuting the poor and marginal. Indeed, he argued, "the whole of the criminal justice system, especially the prosecutorial system, was designed to protect the people, overwhelmingly non-elite, who suffered from crime". Langbein also argued that Hay underemphasized the role of jury discretion, particularly the way in which petty juries regularly returned partial verdicts, thus

mitigating the severity of the law. More broadly, Langbein asserted that Hay's thesis was ultimately non-falsifiable: the execution of a rich man "proved" the thesis as much as if he had been pardoned, while the execution or pardon of a poor man did the same in reverse.[6]

In a more measured critique of Hay's thesis, Peter King argued that the variety of actors within the criminal justice process, many of whom were not members of elite groups, undermined the potential that the law could have been used as the exclusive tool of elites. While accepting "that the law was ultimately controlled by a small gentry elite", King nevertheless argued that the criminal law during this period was better conceptualized "as a multi-use right within which the various groups in eighteenth-century society conflicted with, cooperated with and gained concessions from each other". Victims, for example, were central actors within the criminal justice process and had a variety of options open to them, such as whether or not to prosecute and what charges to pursue. They might also fail to prosecute the case or wilfully present their case poorly so as to engineer an acquittal. Finally, if their prosecution resulted in a capital conviction, they might then support a petition for a pardon. Similarly, petty juries could return partial verdicts, finding a person guilty of a lesser, non-capital offence (often in the face of obvious evidence of guilt). King also showed how the judicial decision over which felons left to hang expiated for their crimes on the gallows was influenced by a variety of factors—such as the youth of the offender, their previous conduct or whether or not an example needed to be made to deter others—rather than exclusively dominant class interests.[7]

In addition, the historiography of the Bloody Code has also largely been focused on London and the southeast. John Beattie, Peter Linebaugh and Robert Shoemaker and Tim Hitchcock have all published monographs exploring the administration of justice in the capital during the era of the Bloody Code.[8] Similarly, Simon Devereaux has recently published two lengthy analyses of patterns of executions and pardons at the Old Bailey from the mid-eighteenth century until the decline of the Bloody Code in the late 1830s.[9] Devereaux's work in turn extends upon and offers a critique of earlier work by V. A. C. Gatrell on patterns of capital convictions and executions at the Old Bailey between 1701 and 1840.[10] Moving from the capital to the Home Circuit, John Beattie has also published a monograph on the administration of justice in Surrey and Sussex between 1660 and 1800, while Peter King has written extensively on Essex (most notably his monograph, *Crime, justice and*

discretion in England 1740–1820).[11] In addition to this, a large historiography has also developed focusing on the role played by various (typically London-based) elite actors in the reform movement and the eventual repeal of the Bloody Code in the 1830s and 1840s.[12]

On one level, as Simon Devereaux has recently argued, this state of affairs is perfectly understandable. By the turn of the eighteenth century, London had become the most populous city in Europe and by 1815, with a population of over 1.4 million persons, in the world. As the central court for both the City of London and the county of Middlesex, during the height of the Bloody Code the Old Bailey possessed the largest criminal jurisdiction of any court in Europe. Between 1674 and 1837 almost 113,000 persons were tried in this one court, with an estimated 9474 being capitally convicted. London also executed more felons than any other city or region in the western world: an estimated 584 persons in just the years 1775 through 1786 (or almost one execution per week). It was this experience of large numbers of capital convictions and executions that informed both the views of elites and public debate on capital punishment during the period.[13] Another, more practical reason for the focus on the Old Bailey—and more broadly the Home Circuit—is that, in contrast to many provincial circuits, its records are remarkably well preserved. The Proceedings of the Old Bailey have also been digitized and are easily available alongside supporting primary sources on an attractive and accessible website.[14] This state of affairs has, nevertheless, resulted in a marked skew within the historiography towards the south-east, the metropolis and the Old Bailey.

In a recent article, however, Peter King and Richard Ward have drawn our attention to what they term the geography of the Bloody Code; that is the often stark differences between how the capital code was administered between the centre and the periphery.[15] Several other studies of the administration of justice across both English provinces and Welsh counties have highlighted how the Bloody Code was administered differently in these places than in the capital. While an average year during this period would have seen dozens of felons go to the gallows in the capital, in the provinces—and particularly in Wales—the gallows were utilized much more sparingly.[16] In their analysis of the administration of the Bloody Code across England and Wales between 1750 and 1775, King and Ward showed how the execution rate for property offenders per head of population decreased the further that one moved away from the capital. While the annual execution rate per 100,000 population

for property offences was 2.01–3.85 in London and Middlesex, in Leicestershire it was 0.15–0.34, while in Westmorland, Durham and Northumberland and much of Wales it was 0.00–0.14. In describing this stark difference between centre and periphery, they adopt the metaphor of a stone being thrown into a pond to describe the impact of the capital code between the two poles:

> At the centre the water was greatly disturbed, but while the impact was still significant in the immediate regions around the capital, especially in the southern counties and in the east midlands, the resistance of distance (as Scott has termed it) meant that it rapidly fell away as one moved into northern England, into the south-west (Devon excepted) or into Wales.[17]

King and Ward draw on the work of the political scientist anthropologist James C. Scott on southeast Asia as a lens to understand this centre-periphery dynamic. In his *The art of not being governed*, Scott described how the power of the state concentrated in lowland areas dwindles with the increasing "friction of terrain" as one moves into upland, sparsely populated areas. Indeed, for Scott, the culture of these upland regions should be interpreted as "barbarism by design"; that is a means of escaping lowland state authority through its antithesis.[18] Applying Scott's thesis to eighteenth-century England and Wales, King and Ward suggest that it is possible that the mountainous nature of the periphery coupled with an inadequate transport infrastructure could have created similar "friction of terrain" or "resistance of distance", which in turn could have limited the cultural and political power of the state in these regions. Developing King's earlier work on the role of decision makers within the eighteenth-century criminal process, King and Ward argue that the combined actions of prosecutors, grand juries and petty juries on the periphery created "a particularly potent set of mutually reinforcing mechanisms for mercy" that limited the number of felons going to the gallows. Primarily, within contexts that emphasized informal processes of restitution and where they was an aversion to capital punishment, fewer victims would have been willing to pursue offenders through the courts, particularly for capital property offences. This would have reduced the size of the assize calendar that met the visiting assize judge; one of the key indicators for them of both the level of crime in the county and the number of exemplary executions that were required. Grand juries in their turn could reduce the calendar further by returning large numbers of

bills as ignoramus, while petty juries could return partial verdicts to limit the number of offenders sentenced to death. Combined, these three actions would, King and Ward argue, have "generate[d] very powerful arguments against the need to hang the few offenders who were capitally convicted". Conversely, the combination of large assize calendars and the capital conviction of large numbers of felons for serious property offenders at the centre would have confirmed in the minds of judges that equally large numbers of exemplary executions were required to deter others.[19]

In this book, my aim is to extend Kingand Ward's analysis by presenting a quantitative analysis of the administration of the justice in England and Wales between 1760 and 1830. Drawing on a dataset of 22,471 indictments from across four English and three Welsh counties, I will explore the similarities and differences between how the Bloody Code was administered between, on the one hand, individual English and Welsh counties, and, on the other, England and Wales. To this end, the book is structured in two parts of two chapters each, both mirroring the other. In Chapter 2, I begin my analysis by tracing the criminal justice process in the four English counties selected for analysis—Kent, Cornwall, Oxfordshire and Lancashire—from initial indictment through to sentencing. In doing so, I explore a series of related questions such as: what impact did population change and socio-economic factors, namely war and dearth, have on the patterning of indictments across the four counties? Were some kinds of offence successfully prosecuted more often than others? Were there any differences between the counties in terms of the percentages of persons convicted, percentages of partial verdicts, and the sentences passed upon those who were convicted? Finally, what role, if any, did the sex of the offender play in the courts' decision-making process: was one sex more likely to be convicted than the other and, once convicted, did one sex receive harsher sentences than the other?

The answers to these questions provide the basis for Chapter 3, where I turn my attention to the outcomes for those felons who were sentenced to death in the four counties. I begin the chapter by examining the differing outcomes for those felons who were sentenced to death for crimes against the person; namely murder, infanticide and rape. I then focus in the second part of the chapter on the outcomes for those sentenced to death for property offences. In doing so, I explore three main questions: firstly, did the "ripple" pattern of executions for property offences highlighted by King and Ward for the period 1750–1775 extend over the

longer period? Second, what impact did war and dearth have on patterns of executions and pardons for property offences; were capitally convicted property offenders more likely to expiate for their crimes during periods of peace or wartime, during periods of relative prosperity or during hard times? Finally, what role did the sex of the property offender have on the likelihood of them dying on the gallows; were male property offenders more likely to hang than their female equivalents?

The second part of the book focuses on Wales, and in particular, the three counties that comprised the Brecon Circuit of the Wales Courts of Great Sessions: Breconshire, Glamorganshire and Radnorshire. Chapters 4 and 5 are structured identically to Chapters 2 and 3, and ask the same questions of the Welsh data. A central theme of my analysis of the Welsh data will be the claims made by David J. V. Jones that felons who were capitally convicted in Wales were significantly less likely to expiate for their crimes on the gallows than those in England, and that by the turn of the nineteenth century, the Welsh authorities "did not need the death penalty or ceased in practice to regard many offences as capital offences".[20] Was this indeed the case? In a period when, according to Gatrell, the Bloody Code was buckling, and ultimately broke, under the pressure of having to pardon vast numbers of felons "if the land were not to be covered in gallows", had the Welsh in practice already tacitly abolished capital punishment for most offences?[21] More broadly, was it the case that those capitally convicted in Wales were more likely to be pardoned than those in England, and if, so was this for all crimes? Again, what role, if any, did socio-economic factors such as war and dearth have on the numbers and percentages of felons sent to the gallows? Was the subsequent image of Wales as "a land of white gloves"—of maiden assizes where no serious offences were tried—a myth or an accurate reflection of the administration of the Bloody Code in the principality during the Georgian period?[22]

My approach, then, will be quantitative and comparative; focused on the broad patterns between, on the one hand, individual counties and, on the other, between England and Wales; what may be termed a satellite-eyed perspective. That said, however, I will where necessary refocus the lens of my analysis downwards to illustrate or explore a particular pattern with more qualitative data. I will also be mindful of Simon Devereaux's recent comment that we should focus not just on the percentages of felons executed, but also the lived experience of contemporaries. Their experience of the Bloody Code in operation would, after all,

not have been based on the percentage of felons executed to those capitally convicted (or even how these patterns had changed over their lifetime), but on how regularly they witnessed (if they so wished) capitally convicted felons die on the gallows. As he rightly observes, "judges did not hang percentages; they hanged people. Execution-goers did not see a certain percentage of capital convicts hanged; they saw a specific number of people put to death on a specific occasion".[23] Indeed, it would not have been until the publication of the 1819 Report from the Select Committee on Criminal Laws that contemporaries would have been able to see in tabular form the patterns of executions and pardons for various offences in various English and Welsh counties from the early- to mid-eighteenth century to their present day.[24]

Notes

1. Samuel Romilly, *The speeches of Sir Samuel Romilly in the House of Commons, in two volumes: Vol. I.* (London, James Ridgway and Sons, 1820), p. 108.
2. For a list, see Leon Radzinowicz, *A history of English criminal law and its administration from 1750, vol. 1: The movement for reform* (London, Stevens & Sons Ltd, 1948), Appendix 1.
3. Charles Phillips, *Vacation thoughts on capital punishments* (London, W. & F. G. Cash, 1857), pp. 3, 4.
4. Indeed, the Bloody Code was significantly less "bloody", at least in terms of the rates of persons executed, than the capital code of early modern England. For a discussion, see Philip Jenkins, 'From gallows to prison? The execution rate in early modern England', *Criminal Justice History*, vol. 7 (1986), 51–71.
5. Douglas Hay, 'Property, authority and the criminal law', in Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow, *Albion's fatal tree* (London, Verso, 2011 [1975]), pp. 17–63.
6. John H. Langbein, 'Albion's fatal flaws', *Past & Present*, vol. 98 (1983), 96–120, pp. 101, 105.
7. Peter King, 'Decision-makers and decision-making in the English criminal law, 1750–1800', *The Historical Journal*, vol. 27, no. 1 (1984), 25–58, pp. 51, 53. For Hay's responses to his critics, see 'Writing about the death penalty', *Legal History*, vol. 10, nos. 1 & 2 (2006), 35–52; 'Introduction to the second edition', in Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow, *Albion's fatal tree* (London, Verso, 2011 [1975]), xxxi–xli. For a response to Langbein in particular, see Peter Linebaugh, '(Marxist) social history and

(conservative) legal history: A reply to professor Langbein', *New York University Law Review*, vol. 60 (1985), 212–43.

8. John M. Beattie, *Policing and punishment in London 1660–1750: Urban crime and the limits of terror* (Oxford, Oxford University Press, 2001); Peter Linebaugh, *The London hanged: Crime and civil society in the eighteenth century* (London, Verso, 2006); Tim Hitchcock and Robert Shoemaker, *London lives: Poverty, crime and the making of a modern city* (Cambridge, Cambridge University Press, 2015).
9. Simon Devereaux, 'England's "Bloody Code" in crisis and transition: Executions at the Old Bailey, 1760–1837', *Journal of the Canadian Historical Association*, vol. 24, no. 2 (2013), 71–113; 'Execution and pardon at the Old Bailey 1730–1837', *American Journal of Legal History*, forthcoming; See also 'Peel, pardon and punishment: The Recorder's Report revisited', in Simon Devereaux and Paul Griffiths (eds.), *Penal practice and culture, 1500–1900: Punishing the English* (Basingstoke, Palgrave Macmillan, 2004), pp. 258–84.
10. V. A. C. Gatrell, *The hanging tree: Execution and the English people 1770–1868* (Oxford, Oxford University Press, 1996), especially Appendix 2.
11. John M. Beattie, *Crime and the courts in England 1660–1800* (Oxford, Clarendon Press, 1986); Peter King, *Crime, justice, and discretion in England 1740–1820* (Oxford, Oxford University Press, 2000). See also John M. Beattie, 'Crime and the courts in Surrey 1736–1753', in J. S. Cockburn (ed.), *Crime in England 1550–1800* (London, Methuen & Co Ltd, 1977), pp. 155–86; 'The pattern of crime in England 1660–1800', *Past & Present*, no. 62 (1974), 47–95.
12. For notable examples, see Radzinowicz, *A history of English criminal law*, *Op. Cit.*, David D. Cooper, *The lesson of the scaffold: The public execution controversy in Victorian England* (London, Allen Lane, 1974), Chapters 1–4; Randall McGowen, 'The image of justice and reform of the criminal law in early nineteenth-century England', *Buffalo Law Review*, vol. 32, no. 1 (1983), 89–124; Gatrell, *The hanging tree, Op. Cit.*, Boyd Hilton, 'The gallows and Mr Peel', in T. C. W. Blanning and David Cannadine (eds.), *History and biography: Essays in honour of Derek Beales* (Cambridge, Cambridge University Press, 1996), pp. 88–112.
13. Simon Devereaux, 'England's "Bloody Code"', *Op. Cit.*
14. Sharon Howard, 'Bloody Code: Reflecting on a decade of the Old Bailey online and the digital futures of our criminal past', *Law, Crime & History*, vol. 1 (2015), 12–24; https://www.oldbaileyonline.org/. There is also the excellent companion web resource https://www.londonlives.org/ and the newly launched (2017) https://www.digitalpanopticon.org/.
15. Peter King and Richard Ward, 'Rethinking the Bloody Code in eighteenth century Britain: Capital punishment at the centre and on the periphery', *Past & Present*, vol. 228 (2015), 159–205.

16. See, for example, David J. V. Jones, 'Life and death in eighteenth-century Wales', *Welsh History Review,* vol. 10, no. 4. (1981), 536–48; Gwenda Morgan and Peter Rushton, *Rogues, thieves and the rule of law: The problem of law enforcement in north-east England* (London, Routledge, 1998); John Walliss, 'Crime and justice in Georgian Cheshire: The Chester Court of Great Sessions 1760–1830', *Journal on European History of Law*, vol. 6, no. 1 (2015), 38–55. For discussions of broader patterns across the British Isles, see M. Anne Crowther, 'Crime, prosecution and mercy: English influence and Scottish practice in the early nineteenth century', in S. J. Connolly (ed.), *Kingdoms United? Great Britain and Ireland since 1500: Integration and diversity* (Dublin, Four Courts Press, 1999), pp. 225–38; Paul T. Riggs, 'Prosecutions, juries, judges and punishment in early nineteenth-century Scotland', *Journal of Scottish Historical Studies*, vol. 32, no. 2 (2012), 166–89; S. J. Connolly, 'Unnatural death in four nations: Contrasts and comparisons', in S. J. Connolly (ed.), *Kingdoms United? Great Britain and Ireland since 1500: Integration and diversity* (Dublin, Four Courts Press, 1999), pp. 200–14.
17. King and Ward, 'Rethinking the Bloody Code', *Op. Cit*., pp. 166, 168.
18. James C. Scott, *The art of not being governed: An anarchist history of upland southeast Asia* (New Haven, CT, Yale University Press, 2009).
19. King and Ward, 'Rethinking the Bloody Code', *Op. Cit*., p. 186.
20. Jones, 'Life and death in eighteenth-century Wales', *Op. Cit*., p. 545.
21. Gatrell, *The hanging tree, Op. Cit*., p. 20.
22. Richard W. Ireland, *Land of white gloves? A history of crime and punishment in Wales* (London, Routledge, 2015).
23. Devereaux, 'England's "Bloody Code"', *Op. Cit*., pp. 82–83.
24. Select Committee on Criminal Laws, *Report from the select committee on criminal laws relating to capital punishment in felonies*, 1819, VIII.1, Appendices 1–25.

PART I

England

CHAPTER 2

The Criminal Justice Process in Georgian England

Introduction

In this chapter, I will begin my analysis by tracing the criminal justice process across the four English chapters selected for analysis from indictment through to sentencing. Between 1760 and 1830, just over 18,000 persons were indicted across the four counties, just over half of whom were subsequently convicted by a trial jury. Of those who were convicted, just under two-fifths were sentenced to death, just over third to a period of imprisonment, while a quarter were sentenced to transportation. In the next chapter, I will then explore the outcomes for those felons who were sentenced to death across the four counties.

In his analysis of the administration of justice in eighteenth- and early-nineteenth century Essex, Peter King likened the criminal justice process during this period to "a bewildering journey along a route which can best be compared to a corridor of connected rooms or stage sets":

> From each room one door led on towards eventual criminalisation, conviction, and punishment, but every room also had other exits. Each had doors indicating legally acceptable ways in which the accused could get away from the arms of the law, while some rooms also had illegal tunnels through which the accused might sometimes be smuggled to safety. Each room was also populated by a different and socially diverse group of men and women, whose assumptions, actions, and interactions, both with each

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J. Walliss, *The Bloody Code in England and Wales, 1760–1830*,
World Histories of Crime, Culture and Violence,
https://doi.org/10.1007/978-3-319-74561-9_2

> other and with the accused, determined whether or not he was shown to an exit or thrust on up the corridor.[1]

This chapter, then, will focus on the first two of these "rooms": those populated by defendants, often on trial for their lives, prosecutors, who determined whether or not to prosecute, grand juries, who decided whether to return an indictment as a "true bill" or to reject it as "ignoramus", and petty juries, who, having heard the evidence in court, determined innocence or guilt (and degree of guilt). It will be structured so as to follow the defendants' process through these rooms, while discussing the broader context in which they were located. In the first part of the chapter, I will examine the pattern of indictments across the four counties over the seventy-year period, exploring the impact of population growth, as well as war and dearth upon them. In the second part of the chapter, I will then trace the criminal justice process, exploring the crimes for which males and females were indicted, the verdicts handed down, and the sentences passed on those who were convicted. Finally, I will narrow my focus to explore the role that the sex of the alleged offender played in the court's decision-making process.

Patterns of Indictments

Indictments and Population

Over the course of the eighteenth- and early-nineteenth centuries, the number of persons indicted at English assizes increased rapidly. At the Old Bailey, for example, there was an almost 600% increase between 1760 and 1830. While the number of persons indicted typically remained below a thousand per annum, after 1812 it increased steeply, reaching 2167 persons in 1829. Indeed, just under 40% of all the persons indicted at the Old Bailey over the seventy-year period were indicted in the fourteen years between 1816 and 1829. Essex too experienced a large (364%) increase from an average of 58 persons indicted per annum between 1740 and 1748 to 269 persons per annum between 1815 and 1820.[2] Similarly, the average annual number of indictments increased in Surrey from over 200 in the 1720s to over 300 by the end of the century.[3] All these increases, however, were dwarfed by that seen in Cheshire, where there was a 779% increase in indictments between 1760–1769 and 1820–1829.[4] Similar increases were also seen across the four English counties (Fig. 2.1a–d).

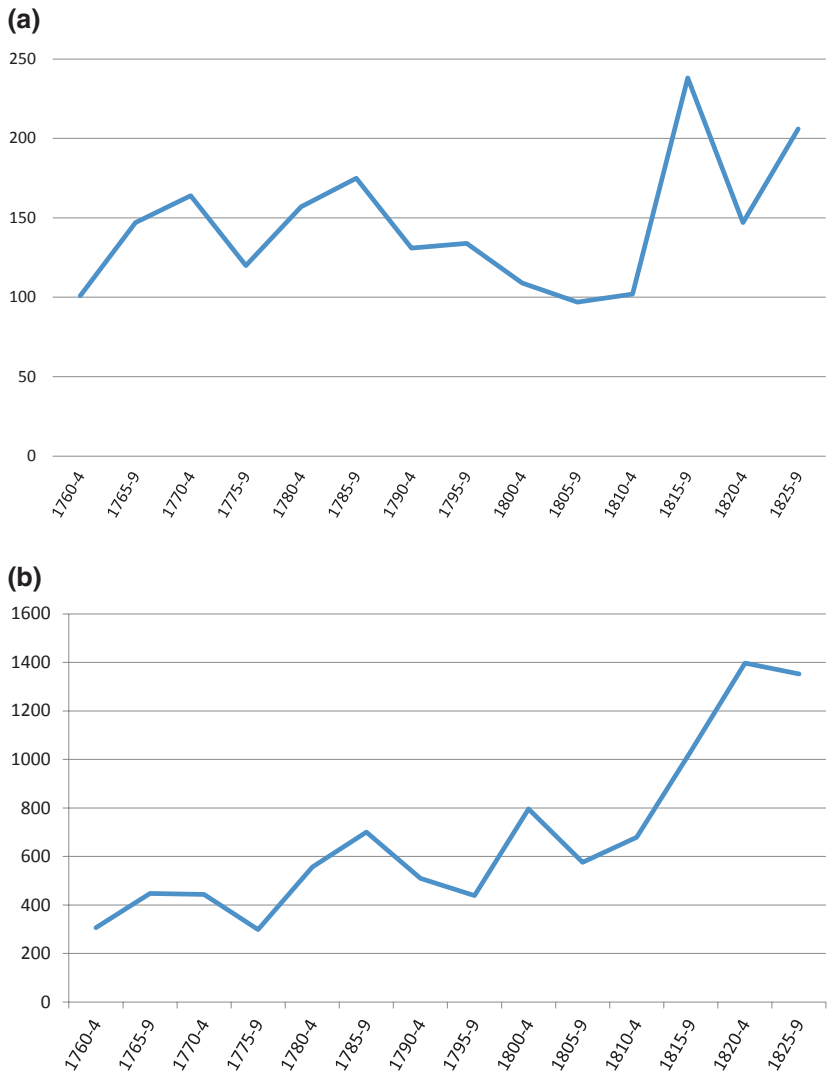

Fig. 2.1 **a** The number of persons indicted at the Cornwall county assizes, 1760–1830 ($n = 2028$). **b** The number of persons indicted at the Kent county assizes, 1760–1830 ($n = 9538$). **c** The number of persons indicted at the Lancashire county assizes, 1760–1830 ($n = 4733$). **d** The number of persons indicted at the Oxfordshire assizes, 1760–1830 ($n = 1731$)

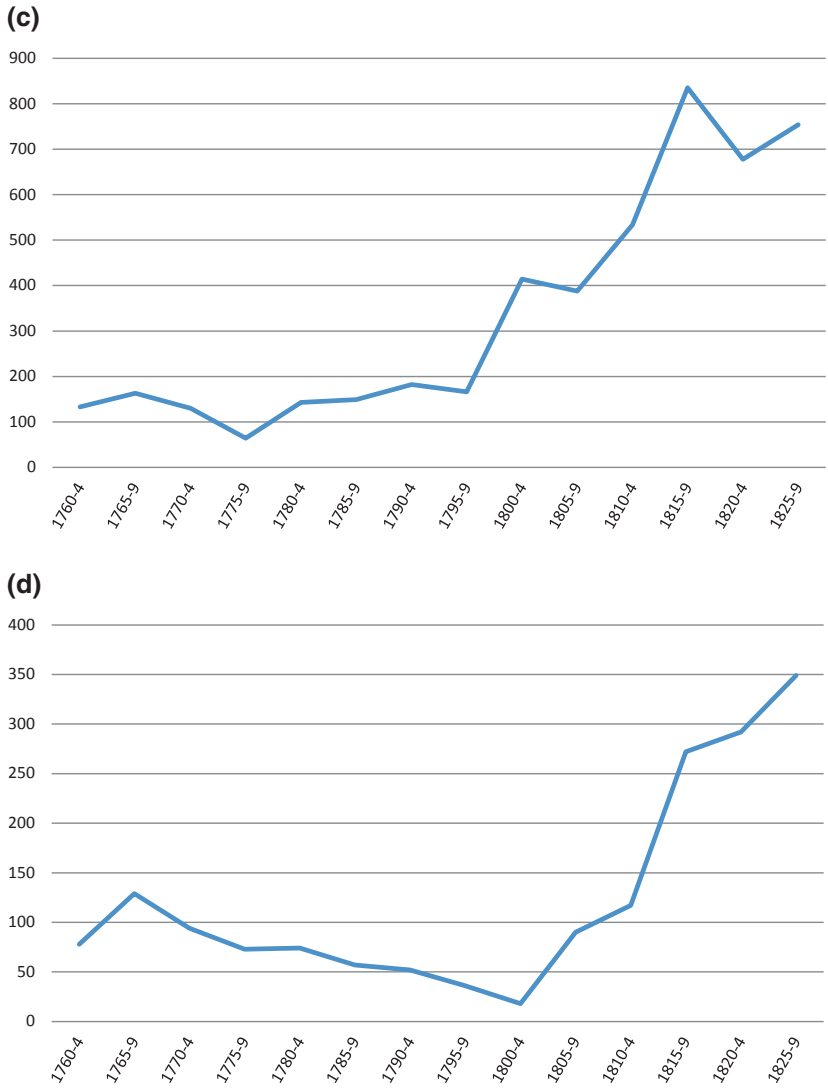

Fig. 2.1 (continued)

The patterns of indictments in the four English counties mirror those seen elsewhere. The number of persons indicted increased significantly across all four counties over the seventy years. This ranged from a 264% increase in Kent between 1760–1769 and 1820–1829 (755–2749 persons), to a more modest 42% increase in Cornwall (248–353 persons).[5] Lancashire and Oxfordshire also experienced large increases over the same period: 147 and 209% (or from 580–1432 and 207–641 persons respectively).

On one level, these increases reflected the growth in the population of each county over the period. A Pearson R test indicated that there was an association between the population size of each county and the mean annual number of persons indicted per decade in Kent, Lancashire and Oxfordshire, but not in Cornwall: as the population of each county increased, so did the number of persons indicted.[6] While relatively accurate calculations of the population are only available from the first census in 1801 onwards, population historians, most notably Tony Wrigley and his colleagues in the Cambridge Group for the History of Population and Social Structure, have produced a series of estimates of the population of individual counties extrapolated from parish records.[7] Table 2.1 shows the population of each county and mean number of indictments annually in the four English counties based on Wrigley's estimate for 1761 and census data.

The population of all four counties increased over the seventy-year period. Between 1761 and 1821, the population of Cornwall almost doubled from an estimated 132,554 to 262,156 persons, before reaching 302,494 in 1831.[8] The population of Kent also grew rapidly during the period, increasing by almost 70% from an estimated 236,314 in 1761 to 397,886 in 1831. Indeed, by the time of the first census, Kent ranked fifth among the English and Welsh counties in population size and seventh in population density.[9] Such population growth, however, was dwarfed by that which occurred in the also rapidly industrialising county of Lancashire, whose population grew by almost 350% from 303,312 in 1761 to 1,359,692 in 1831. The population of Manchester, in particular, grew by almost 4000% from 17,101 in 1758 to 700,000 in 1831, while that of Liverpool grew by almost 1500% from 10,446 in 1720 to 165,175 in 1831. While high birth rates contributed to this growth, migration played a much greater role; it has been estimated that the number of persons migrating to Lancashire looking for work increased from 4000 per year between 1750 and 1801 to 17,000 between 1821 and 1831.[10] In contrast, Oxfordshire experienced a relatively modest

Table 2.1 The population of the four English counties in 1761, 1801 and 1821 with the mean annual number of indictments per 100,000 population in the corresponding decades

County	*Population 1761*	*Mean annual number of indictments per 100,000 1760–1769*	*Population 1801*	*Mean annual number of indictments per 100,000 1800–1809*	*Population 1821*	*Mean annual number of indictments per 100,000 1820–1829*
Cornwall	132,554	19	193,039	11	262,156	13
Kent	236,314	32	258,450	53	352,856	78
Lancashire	303,312	10	683,252	12	1,067,287	13
Oxfordshire	95,869	22	112,194	10	138,631	42

(45%) population increase, from an estimated 95,869 persons in 1761 to 138,631 in 1821.

Population growth, however, can only provide a partial explanation for the patterning of indictments across the four counties over the period. For example, Kent had a smaller population than Lancashire throughout the period, but yet had a higher mean annual number of indictments per head of population than the latter county. Oxfordshire too had a larger mean annual number of indictments over most of the period than Cornwall and Lancashire, despite having the smallest population of the four counties. Moreover, in all of the counties with the exception of Cornwall, the mean annual number of indictments increased much faster than did population. In Oxfordshire, the number almost doubled from 22 persons per 100,000 between 1760 and 1769 to 42 persons per 100,000 between 1820 and 1829. In Lancashire, however, the growth was much smaller; from 10 persons per 100,000 in the 1760s to 13 persons per 100,000 in the 1820s. In contrast, Cornwall saw a slight decline; from 19 to 13 persons per 100,000 over the period. Thus, while the growing population of each county obviously increased the potential number of persons who could possibly be indicted, this factor alone cannot account for the increase in the number of indictments in each county.[11] Rather, with the notable exception of Cornwall, it would appear that there was a real increase in the number of indictments over the period.

Indictments, War and Dearth

Two other factors that help to explain the patterns of indictments are war and dearth. Turning first to war, Britain was at war for just over half of the seventy-year period under examination, the country fighting in the Seven Years' War (1756–1763), the American War of Independence (1775–1783) and the French Revolutionary and Napoleonic Wars (1793–1815). In addition, there was also smaller, sporadic warfare in India, including three wars against the Mahrattas in 1775–1802, 1803–1805, and 1817–1818. Both contemporaries and historians have noted how the numbers of indictments, particularly for property offences, were higher during peacetime than when the country was at war. For example, in his analysis of Sussex and Surrey from the mid- to late-eighteenth century, John Beattie concluded that the pattern of indictments for property offences rose and fell in tandem with the price of wheat, peaking

at the end of hostilities when soldiers were demobilized.[12] Similarly, in Essex between 1740 and 1820, almost a third more persons on average were indicted during peacetime than during war.[13] In my own research on Cheshire between 1760 and 1830, I found a highly significant positive relationship between the pattern of indictments for all offences and peace and war; whereas thirty three persons were indicted per annum on average during wartime, during peacetime the number rose to an average of forty three persons per annum (a 30% increase).[14] Likewise, Douglas Hay found that the mean annual number of indictments for theft in Staffordshire between 1755 and 1805 was on average 35% higher during peacetime than during war.[15]

Several interlinked reasons have been proposed to explain this apparent link between peace and increasing numbers of indictments for property offences. Cessations of hostilities were routinely followed by the rapid and often poorly managed demobilisation of soldiers. Following victory in the Seven Years' War, for example, land forces were rapidly reduced from a wartime strength of 203,000 (including German mercenaries) to just 45,000 men. Similarly, just over a third of million men were rapidly demobilized after the Napoleonic War. The various wars had drained off many men, voluntarily or not, from the country for extended periods. While many joined the colours in order to escape from a dire economic situation, a large number of disreputable men were also often forcibly conscripted to remove them from society.[16] Indeed, some joined as an alternative to being prosecuted, either by absconding from their locale or after having been persuaded by the victim or magistrate to enlist to avoid a formal indictment. In some cases, convicted felons opted to join the army or navy as an alternative to their sentence. As Hay puts it,

> …eighteenth-century conscription was explicitly directed by many acts of parliament at those considered most likely to become involved in crime: vagrants, incorrigible rogues, men and boys without visible means of support…For almost half a century, it swept out of England thousands of men and boys from the class and age group most likely to face unemployment and destitution, those thought to be most likely to commit crimes, and a considerable although indeterminate number who had.[17]

Such men returned to a country where the economy was shifting back from a war-footing, with wartime industries closing down or significantly scaling down production and casting off surplus labour in the move to a peacetime economy.[18] They also often returned brutalized by war and

possessing both a competency with weapons and an attitude that would serve them equally well in conflict or a life of crime. A returning cavalryman, for example, would possess skill with bladed weapons and firearms as well as the experience, gained through long periods of living off the land, of taking what he wanted from reluctant civilians. It is thus perhaps of no surprise that military veterans were over-represented among convicted highwaymen, or that the image of hardened, demobilized soldiers operating in criminal gangs generated significant fear among contemporaries.[19]

Significantly more persons were indicted for property offences across the four counties during peacetime than during war (8803 compared with 5509 persons: 62%): see Fig. 2.2.[20] Almost double the mean annual numbers of persons were indicted in Cornwall for property offences during peacetime than during war (23/13 persons respectively), while in Oxfordshire almost three times as many persons were indicted for property offences during peacetime (33/12). Similarly, 84 and 69% more persons were indicted for property offences in Kent and Lancashire respectively during peacetime (145/79 and 61/36 persons respectively).

Figure 2.3a–d show the number of persons indicted per year for property offences in the four counties, highlighting the years of war.

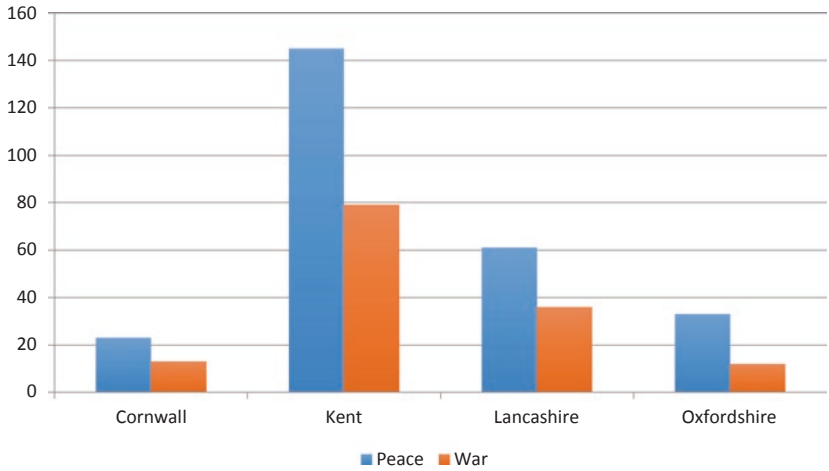

Fig. 2.2 The mean annual number of indictments for property offences during peace and war at four English county assizes, 1760–1830

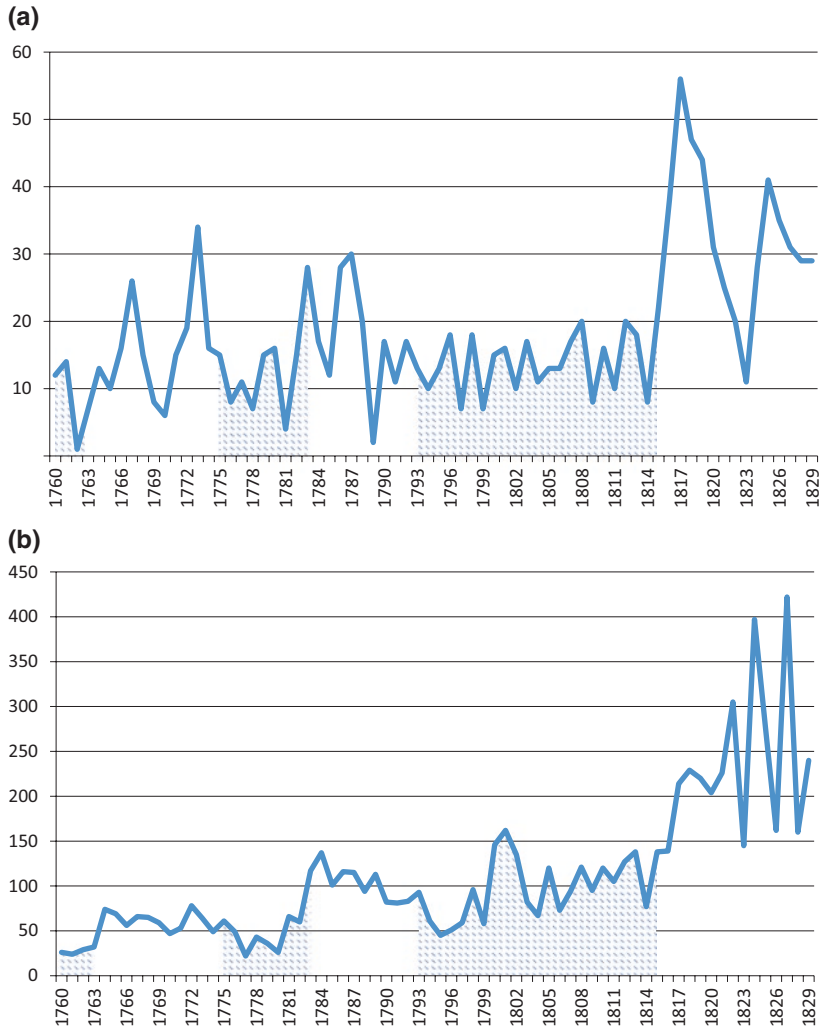

Fig. 2.3 **a** The number of persons indicted for property offences at the Cornwall county assizes, 1760–1830 (years of war highlighted). **b** The number of persons indicted for property offences at the Kent county assizes, 1760–1830 (years of war highlighted). **c** The number of persons indicted for property offences at the Lancashire county assizes, 1760–1830 (years of war highlighted). **d** The number of persons indicted for property offences at the Oxfordshire assizes, 1760–1830 (years of war highlighted)

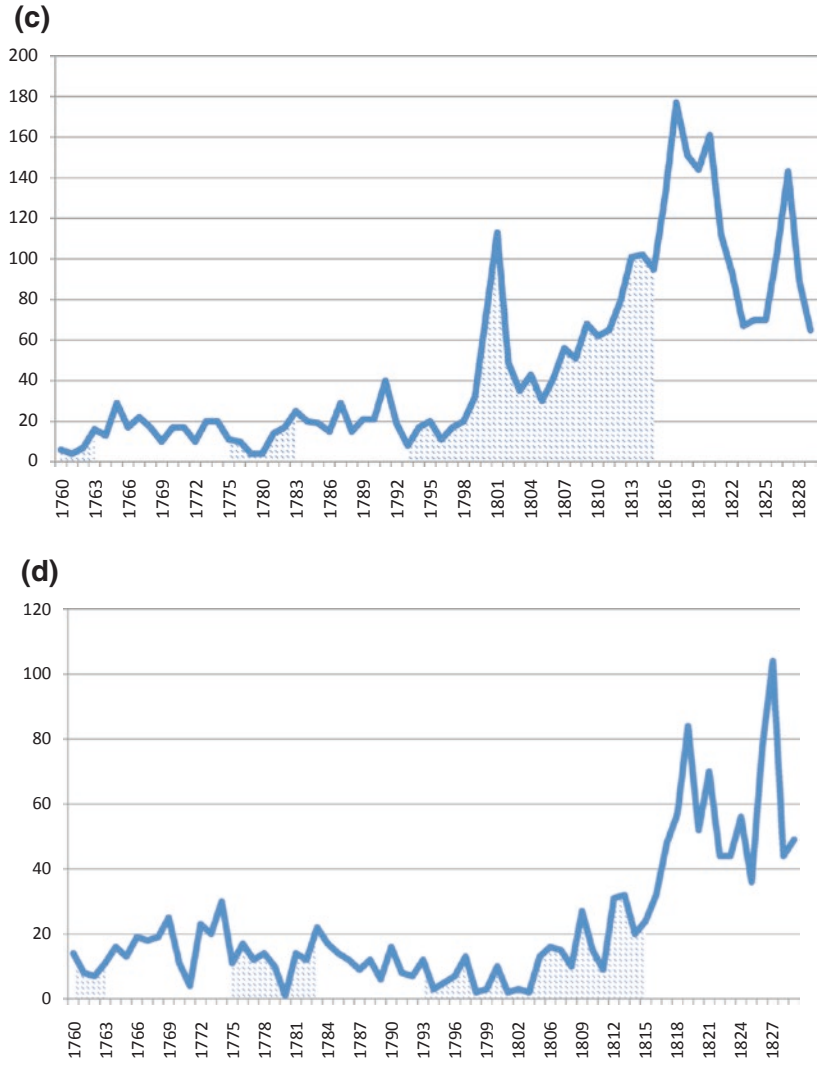

Fig. 2.3 (continued)

While the number of persons indicted for property offences typically increased in the initial period following the cessation of hostilities, this was not always the case. In all the counties except Kent, there was actually a decline in the first few years of peace following the end of the American War of Independence; this was particularly the case in Cornwall where the number of persons indicted for property offences halved between 1783 and 1784 (from 28 to 12 persons). Moreover, in all cases the increase had actually begun during wartime, sometimes in the last few years of war. Again, this was particularly the case with the American War of Independence; the numbers of persons indicted for property offences increased across all four counties from the late-1770s/early-1780s before declining. Across all four counties, the largest increase in indictments for property offences occurred after the end of the Revolutionary and Napoleonic Wars. Indeed, 45% of all those indicted for property offences were indicted during just this fourteen-year period; the percentages ranging from 37% in Cornwall to just over half in Oxfordshire (52%). This trend was not unique to the four counties, but was found across other contemporary English counties. Half of all those indicted for property offences in Cheshire between 1760 and 1830 were indicted between 1816 and 1830. Similarly, 40% of those indicted at the Old Bailey for theft over the same period were indicted in just this fourteen-year period.[21]

The costs of both war and peace exacerbated existing social and economic pressures in the country over the period. Oxfordshire experienced severe economic distress over the course of the eighteenth- and early-nineteenth centuries, largely as a consequence of enclosure. Between 1755 and 1800, some 68,840 acres of land were enclosed in the county; a process that, while making farming more efficient and profitable, led to growing immiseration among agricultural workers.[22] Many not only lost their homes and livelihood, but were also allotted insufficient land to make up for the loss of their rights of common. Their plight was exacerbated by years of dearth in 1766–1768, 1794–1796 and 1801–1801. Proto-industrialisation, particularly in the weaving trade, also led to a fall in the number of workers required. Consequently, from the middle of the eighteenth century, both the number of persons in receipt of some form of aid and, concomitantly, the money raised in poor-rates to support them increased dramatically. Between 1766 and 1803, the amount raised in poor-rates in the county more than trebled from £31,154 12s

7d to £103,359 10s 6d, when a fifth of the population were receiving some kind of aid. While wages rose in the latter years of the eighteenth century, these did not keep up with the price of food and rent. While the wages of an artisan and agricultural labourer rose by 35 and 37% respectively, the price of beef, for example, rose by 50%, mutton by 64% and butter by 76%.[23]

These social problems led to unrest within rural communities. In Deddington, for example, a canal boat laden with flour was seized on its way to the midlands in 1797, and only released when its owner agreed to sell the contents to the inhabitants at a reduced rate. Similarly, during riots in Banbury in 1800, a public house occupied by a corn dealer was set on fire. However, the longest and most acrimonious example of unrest in the county centred around Otmoor, where locals engaged in an series of confrontations with landowners over rights of common for almost forty years, culminating in the 1830 "Revolution of Otmoor". Between 1786 and 1830, several landowners had proposed draining the moor and enclosing the land but were met with resistance from locals who feared the loss of common land. In the summer of 1830, a new cut in a river crossing led to flooding on the moor and, in response, locals destroyed its embankment and tore down enclosure fences. Twenty-two of those involved were indicted for felony at the Oxfordshire assizes but the judge directed the jury to acquit them. Later that year, forty two persons were arrested but were rescued by a crowd in Oxford before they could be taken inside the gaol.[24]

In contrast, in Kent, it was innovations in husbandry and farming technologies rather than enclosure that led to increasing immiseration among agricultural workers; much of the county having already been enclosed by the turn of the eighteenth century. Such developments led to the consolidation of holdings and the reduction of the number of tenant farmers required. Moreover, such farms typically only employed a small number of labourers, importing more on a casual basis as and when required. The dual forces of innovation and consolidation thus produced increasing pauperisation among farm labourers. This state of affairs was exacerbated both by periods of dearth, such as occurred between 1795–1796, 1799–1801 and 1801–1804, and the previously discussed increase in the county's population, which served to increase both the pool of workers and the number of mouths to feed. While periods of war both reduced the male population for extended periods and

increased demand for wheat to feed the army, labourers often reaped little benefit. Cessations of hostilities also invariably lead to a fall in prices and the flooding of the agricultural economy with newly discharged soldiers seeking work.[25] This was particularly the case following the end of the long period of the Revolutionary and Napoleonic Wars. The 1816 Board of Agriculture Report for the county reported how, according to one landowner, J. Boys, "the state of the labouring poor is the worst I ever remember". Another, Sir Henry Hawley, opined, "the labouring poor are in a very depressed state, owing to the want of employment, the farmers not being able to have more work done than what is absolutely necessary". Yet another, Sir Henry Oxenden, was even starker in his assessment:

> Nothing can be more wretched than the state of the labouring poor (though probably not so great sufferers as in many other parts of England). One third, I should think, were out of employ, and a portion of the remainder working at a price which is insufficient to maintain their families.[26]

Perhaps the best indicator, however, of the growing level of distress in the county over the period is the rapid increase in the number of persons claiming poor relief. Between 1748–1750 and 1783–1785 the average annual amount disbursed in poor relief in the county increased sharply from £41,997 to £106,606. By 1790 this had reached around £120,000, while in 1817–1818 a combination of poor harvests and the post-war slump led to £399,000 being disbursed. It has also been estimated that in 1801, 13.4% of the county's population was receiving some kind of relief, compared to the national average of 11%. The percentage of the population in this situation, however, varied from parish to parish, with rural parishes typically containing a higher proportion of the poor than urban ones.[27] The percentage of households in the rural parish of Ash excluded from the poor rates, for example, increased from 59% in the early-eighteenth century to 68% in 1831, while in St. Nicholas it increased from 69 to 82%. In Wickhambreux, the percentage of households increased from 65 to 76% over the same period. In contrast, in the urban parishes of St. Clements and St. Dunstans, the percentage fell between 1801 to 1831 from 66 to 56% and 70 to 60% respectively.[28]

Cornwall also experienced distress over the period. Although, the county had largely produced enough grain to feed its population until

the 1770s, the growth in its population over the latter part of the century brought about by the emerging tin and copper mining industries led to shortages. As noted above, between 1761 and 1801, the population of Cornwall grew by 46%, the majority of this growth occurring in the mining districts in the west of the county. Consequently, by the end of the century, Cornwall was importing a significant amount of grain to meet the demands of its miners. Crop failures, such as those that occurred in 1794 and 1812, exacerbated this already parlous situation, leading to food riots in several districts. Indeed, several historians have noted the predilection of the Cornish miners for engaging in riotous behaviour, with Eric Hobsbawm and George Rude arguing that "…Cornwall was one of the chief centres of food rioting in the country".[29] John Rule concurred, claiming that "the Cornish miners of the eighteenth and nineteenth centuries were notoriously prone to riot, demonstrating their grievances publically, theatrically and forcefully".[30]

The period 1766–1847 witnessed a large number of food riots across the county; incidents that often attracted hundreds, and sometimes thousands, of participants. Truro, for example, experienced food riots in 1766 (alongside Reduth) and 1767, 1773 and 1796, with an estimated 5000 persons taking part in the latter incident. An estimated 700–800 persons took part in a food riot in Padstow in 1773, a year that also witnessed similar incidents in Truro, Wadebridge, Penryn and Redruth (an event that led to the end of its corn market). There were further such incidents across the county in 1795, 1796, 1801, 1802, 1812 and 1818. The 1796 riots, occurring as they did in the aftermath of the French Revolution, led to fears among elites that the protestors were inspired by more by Jacobinism than the desire to fix prices or stop grain being exported out of the county. Consequently, the Worcestershire militia, who were in the county with standing orders following the riots in the previous year, were deployed to suppress the disturbances. Fifty of those taking part in the riots were arrested and, at the subsequent trial, the leaders were sentenced to death and one was hanged.[31]

In contrast to agricultural workers in regions such as Oxfordshire and Kent, the economic position of workers in industrial regions such as Lancashire was affected much more by periods of economic boom and bust, particularly in the latter part of the period. Between 1806 and 1830, the weekly wage of handloom weavers and factory operatives in the cotton industry across Great Britain declined from 240d and

121d to 75d and 115d respectively. Likewise, the average piece-rate for muslin weavers in Bolton declined from 34s in 1795 to 10s in 1820. The economic fortunes of such workers were particularly affected during wartime, when, as during the implementation of the Continental System, both supplies and export markets were closed off. The cessation of hostilities with France was followed by a brief period of boom before trade again became depressed; a state of affairs exacerbated by both the return of large numbers of men back into the country looking for work and an increase in the price of wheat.[32]

Consequently, the years 1818–1830 saw a series of strikes by weavers and spinners in and around Manchester attempting to improve their wages. In mid-May 1818, some 800 jenny spinners in Stockport went out on strike in response to a decline in their wages over the previous three years from 24s a week for a fourteen-hour day to around 15s. The following month the power-loom weavers in that town also went on strike asking for a increase of 5s a week in their wages. One leading factory owner reacted to these demands by bringing in workers from outside the region, which, in turn, led to three nights of rioting that only ended when the Yeomanry were called in to restore order. June and July also saw an estimated 20,000 factory operatives, including 2200 spinners go out on strike across the city, with the action spreading to Wigan in the following month. In the same month, weavers in several Lancashire towns, including Oldham, Blackburn, Bury and Stockport, also went on strike, in order, according to one manifesto sent from "The Poor Weavers" of Oldham, to "respectfully request your attention to the wretched situation to which we have a long time been exposed, owing to the extreme depression of our Wages…". Six years later, in late-April 1824, the populace of districts around Blackburn and Bury destroyed more than a thousand poor-looms in three days of rioting that also left in its wake £16,000 worth of damage to factories and other premises and ten men dead. Sixty-six of those involved in the incident were indicted at the subsequent Lancaster assizes, where thirty-three received terms of imprisonment and ten were sentenced to death, but later pardoned.[33]

One frequently used measure of the cost of living during the eighteenth century is the Schumpeter-Gilboy price index. This index covers the period 1660–1822, and is based on the price of consumers' and producers' goods including cereals, animal products, clothing and

beverages, and condiments.[34] In his work on Staffordshire between 1742 and 1802, Douglas Hay concluded that there was a strong positive relationship between prices, as measured by the Schumpeter-Gilboy Index, and indictments for property offences; the relationship being particularly strong during periods of war.[35] Beattie found a similar positive relationship in his work on Surrey and Sussex, although he found differences between urban and rural parishes. In Sussex and the urban parishes of Surrey the relationship was strongest during wartime, while in the rural parishes of Sussex it was strongest during peace.[36] More recently in my own work on Cheshire, I also found a strong positive relationship between prices and property indictments, with the relationship being strongest during periods of peace.[37]

Figure 2.4a–d show the number of persons indicted for property offences across the four counties in comparison with the Schumpeter-Gilboy Index.[38]

These trends from the four counties both reflect and differ from those described above. On the one hand, a Pearson's R indicated that there was a strong positive relationship between the annual number of indictments for property offences and consumer prices in Lancashire and Kent, but not in Cornwall and Oxfordshire.[39] However, there was a strong significant positive relationship across all four counties during years of peace.[40] In other words, Lancashire and Kent were similar to Cheshire; in all three counties there was a strong association between prices and the annual number of indictments for property offences across periods of peace and war. All four counties, however, differed from Staffordshire, Surrey and Sussex with a stronger relationship between both variables in peacetime rather than during wartime. Again, it is not clear why Oxfordshire and Cornwall should differ from the patterns seen elsewhere in England. One possible explanation could be that there were better cushions against adversity for those living in communities in these counties than elsewhere. The population of rural areas were often less dependent on the vagaries of the market to obtain food, and were able instead to subsist on food provided by landlords or their own smallholdings.[41] It should also be remembered that the assizes only handled the more serious property offences, and that the kind of low-level property offences that may have been committed by individuals temporarily thrown into distress would more likely have been dealt with at Quarter Sessions or, possibly, informally within the community.

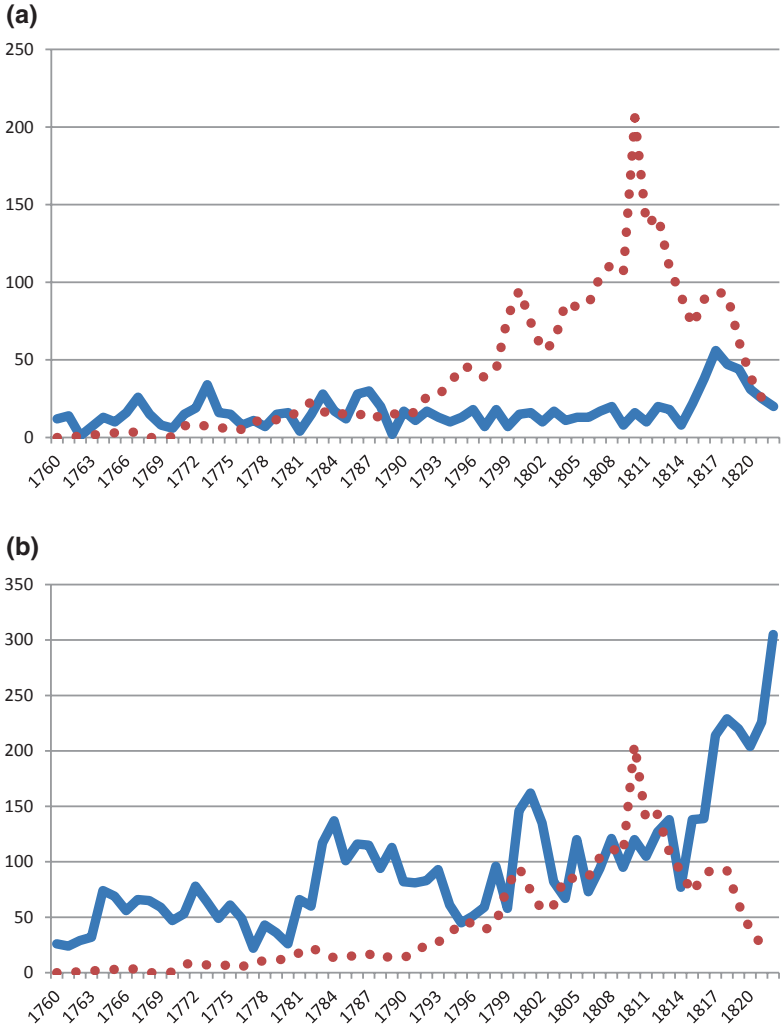

Fig. 2.4 **a** The number of persons indicted for property offences at the Cornwall county assizes in comparison with consumer prices, 1760–1822. **b** The number of persons indicted for property offences at the Kent county assizes in comparison with consumer prices, 1760–1822. **c** The number of persons indicted for property offences at the Lancashire county assizes in comparison with consumer prices, 1760–1822. **d** The number of persons indicted for property offences at the Oxfordshire county assizes in comparison with consumer prices, 1760–1822

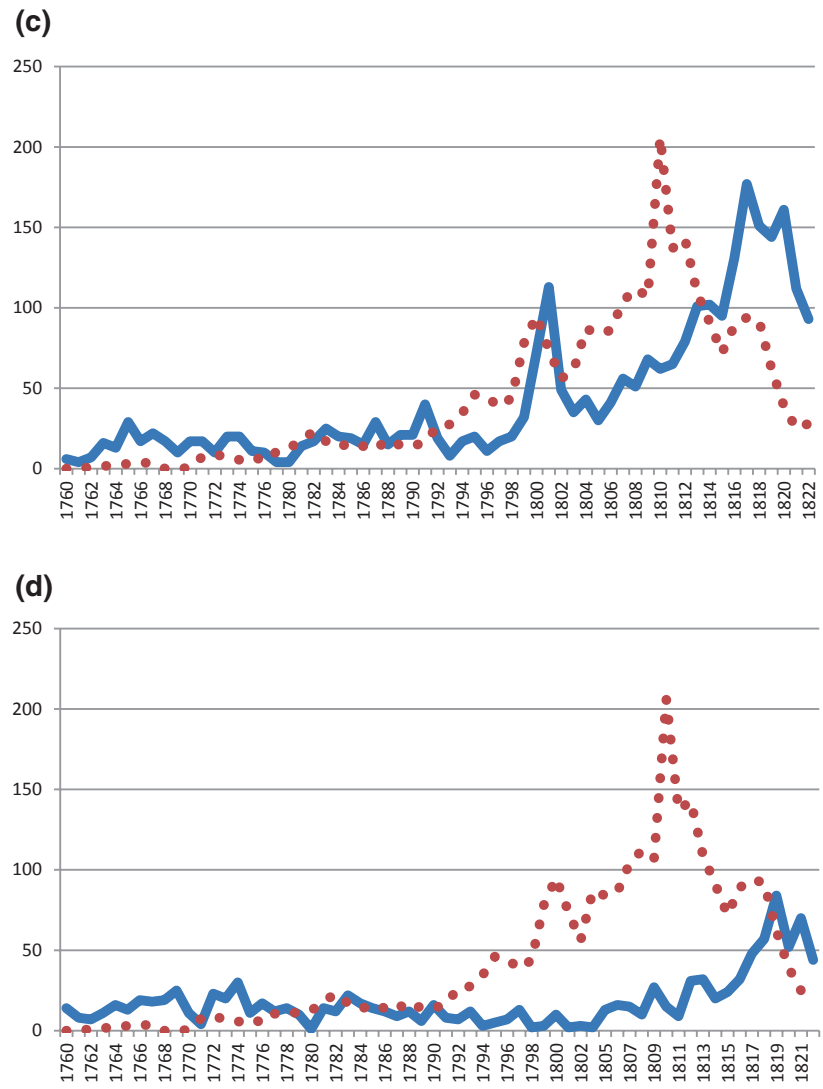

Fig. 2.4 (continued)

The Criminal Justice Process: From Indictment to Sentencing

As is still the case today, the majority of persons who appeared before the courts during the eighteenth and nineteenth centuries were accused of some form of property offence. Between 1760 and 1830, 84 and 88% of persons who appeared before the Cheshire Great Sessions and Old Bailey respectively had been indicted for a form of property offence.[42] Similarly, in the northeast of England between 1718 and 1820, property offenders accounted for around half and a third of those who appeared before the county assizes and quarter sessions respectively.[43] More broadly, by the early-1890s, such offences accounted for around 90% of all committals to trial (indicted and summary) across England and Wales.[44] The types of crime for which persons were indicted across the four English counties are shown in Table 2.2.

Four out of every five persons indicted across the four counties were indicted for a property offence, with over a third being indicted for a form of larceny (36%).[45] In contrast, only 14% of indictments were for a crime against the person, with just under 5% of all indictments being for murder (or 30% of those indicted for a crime against the person). Put another way, for every person indicted for a crime against the person, six were indicted for a property offence; for every indicted murderer there were nine indicted larcenists. That said, there were differences between the individual counties in the percentages of persons indicted for such crimes, although there is no discernible pattern. Both Kent and Oxfordshire had comparable percentages of indicted property offenders to Cheshire and the Old Bailey (87 and 89% respectively), while Lancashire and Cornwall had much fewer (69 and 70% respectively).

Just over half of those indicted across the four counties were found guilty (56%), with only 10% of bills being returned ignoramus. In contrast, 28% of those indicted (and a third of those tried) were acquitted. The most notable characteristic of Table 2.3 is the differences in conviction rates between Cornwall and the other three counties. While roughly similar percentages of persons in Kent, Lancashire and Oxfordshire were convicted (between 57 and 59%), less than half of those indicted in Cornwall were successfully convicted. A person indicted in Cornwall was also slightly more likely to be acquitted or have the bill against them dismissed by a grand jury or because the prosecutor did not attend court. However, there is no evidence of the numbers of persons

Table 2.2 The number and percentage of persons indicted for each crime type at four English county assizes, 1760–1830

Crime type	*County*				*Total*	
	Cornwall	*Kent*	*Lancashire*	*Oxfordshire*		
Larceny	604 (33%)	4035 (45%)	760 (16%)	774 (46%)	6173 (36%)	13,820 (80%)
Burglary	130 (7%)	716 (8%)	583 (12%)	167 (10%)	1596 (9%)	
Highway robbery	49 (3%)	550 (6%)	390 (8%)	64 (4%)	1053 (6%)	
Monetary offences	27 (1%)	182 (2%)	646 (14%)	19 (1%)	874 (5%)	
Housebreaking	98 (5%)	492 (5%)	68 (1%)	80 (5%)	738 (4%)	
Sheep stealing	98 (5%)	347 (4%)	93 (2%)	137 (8%)	675 (4%)	
Horse stealing	54 (3%)	305 (3%)	151 (3%)	69 (4%)	579 (3%)	
Receiving	43 (2%)	305 (3%)	113 (2%)	75 (4%)	536 (3%)	
Larceny in dwelling house	58 (3%)	321 (4%)	97 (2%)	49 (3%)	525 (3%)	
Fraud and forgery	36 (2%)	199 (2%)	198 (4%)	21 (1%)	454 (3%)	
Larceny from the person	35 (2%)	179 (2%)	78 (2%)	19 (1%)	311 (2%)	
Robbery	9 (1%)	68 (1%)	13 (<1%)	20 (1%)	110 (1%)	
Cattle stealing	16 (1%)	28 (<1%)	59 (1%)	3 (<1%)	106 (1%)	
Game offences	5 (0.5%)	37 (<1%)	23 (<1%)	25 (1%)	90 (1%)	
Murder	147 (8%)	233 (3%)	271 (6%)	40 (2%)	691 (4%)	2,332 (14%)
Manslaughter	33 (2%)	90 (1%)	507 (11%)	24 (1%)	654 (4%)	
Stabbing, cutting, wounding and assault	120 (7%)	158 (2%)	75 (2%)	12 (1%)	365 (2%)	
Other sexual crimes	35 (2%)	147 (2%)	46 (1%)	21 (1%)	249 (1%)	
Rape	27 (1%)	77 (1%)	46 (1%)	11 (1%)	161 (1%)	
Infanticide	37 (2%)	24 (<1%)	60 (1%)	9 (<1%)	130 (1%)	
Shooting at	9 (1%)	30 (<1%)	40 (1%)	3 (<1%)	82 (<1%)	
Other	84 (5%)	276 (3%)	325 (7%)	43 (3%)	728 (4%)	1033 (6%)
Riot and public order	29 (2%)	86 (1%)	57 (1%)	0	172 (1%)	
Arson	17 (1%)	21 (<1%)	23 (<1%)	10 (1%)	71 (1%)	
Felony	1 (<1%)	38 (<1%)	2 (<1%)	2 (<1%)	43 (<1%)	
Concealing	4 (<1%)	2 (<1%)	9 (<1%)	4 (<1%)	19 (<1%)	
Total	1806 (100%)	8945 (100%)	4733 (100%)	1701 (100%)	17,185[a]	

[a]The crimes for which 845 persons were indicted are not shown in the sources (Cornwall: 222; Kent: 593; and Oxfordshire: 30)

Table 2.3 The verdicts handed down at four English county assizes, 1760–1830

County	*Verdict*					*Total*
	Ignoramus	*No prosecution*	*Not guilty*	*Guilty*	*Other*	
Cornwall	233 (11.5%)	112 (5.5%)	658 (32.5%)	970 (48%)	54 (3%)	2027 (100%)
Kent	990 (10%)	218 (2%)	2578 (27%)	5492 (58%)	259 (3%)	9537 (100%)
Lancashire	425 (9%)	146 (3%)	1405 (30%)	2676 (57%)	65 (1%)	4717 (100%)
Oxfordshire	163 (10%)	72 (5%)	384 (24.5%)	930 (59%)	16 (1%)	1565 (100%)
Total	1811 (10%)	548 (3%)	5025 (28%)	10,068 (56%)	394 (2%)	17,846[a] (100%)

[a]200 verdicts are not shown in the sources (Kent: 1; Lancashire: 33; and Oxfordshire: 166). In addition, in some cases a verdict is given but no crime type is shown

Table 2.4 The verdicts handed down at four English county assizes by crime type, 1760–1830[a]

Crime type	*Verdict*					*Total*
	Ignoramus	*No prosecution*	*Not guilty*	*Guilty*	*Other*	
Property offences	331 (2%)	331 (2%)	3730 (27%)	8700 (63%)	230 (2%)	13,703 (100%)
Crimes against the person	257 (12%)	73 (3%)	954 (44%)	847 (39%)	49 (2%)	2180 (100%)

[a]Crimes classified as "other" are not shown

indicted affecting this stage of decision making. Around six times more people were indicted in Lancashire over the period than in Oxfordshire, but there was hardly any difference between the two counties in terms of the verdicts handed down (see Table 2.4).

A Pearson Chi Square test indicated that property offences were successfully prosecuted more often than crimes against the person.[46] While both broad types of offence received roughly similar percentages of non-prosecutions and other verdicts, around two-thirds of indicted property offenders received a guilty verdict compared to just under 40% of those indicted for a crime against the person. Indicted property offenders were also much less likely to have the bills against them dismissed by a grand jury than those accused of a crime against the person. These trends echo those found in Cheshire over the same period, where 64.5% of indicted property offenders were convicted compared with just over half of those indicted for a crime against the person.[47] Similarly, persons indicted for crimes against the person at the Surrey assizes (1660–1800) were less

likely to stand trial than those indicted for property offences. Whereas 11.5 and 17% of those indicted for capital and non-capital property offences respectively had the bills against them dismissed by the grand jury, 15% of 27% of those indicted for infanticide, assault and attempted rape, and 44% of indicted rapists were similarly dismissed.[48]

In his work on Surrey between 1660–1800, John Beattie found that petty juries at that county's quarter sessions and assizes returned partial verdicts in 15.8% of the property offence cases that they heard. They also returned partial verdicts in just under a third of murder cases.[49] Similarly, Peter King found that petty jurors in Essex, between 1740 and 1805, returned partial verdicts in 9.6% of the property offence cases that they considered, while those on the Home Circuit between 1782–1787 returned 12.3%.[50] Table 2.5 shows the number and percentage of partial and guilty-as-indicted verdicts across the four counties for several offences.

Only a small percentage of partial verdicts were returned across the four counties: between 7% in Oxfordshire and 12% in Kent. The highest percentages of partial verdicts were returned for those indicted for burglary, whereas comparatively few were returned for those indicted for larceny. This was especially fortunate for the former group as, as we shall see in the following chapter, 13% of those convicted of this crime expiated for their crime on the gallows. Those indicted for housebreaking who received a partial verdict were also fortunate not to potentially join the 5% of those sentenced to death for the crime who also shared this fate. That said, it is difficult to discern an overall pattern in the percentages of partial verdicts returned across the four counties. A relatively high percentage of partial verdicts were returned in Kent, a county with a large number of indictments and executions, but yet an only slightly smaller percentage was returned in Cornwall where the opposite state of affairs existed. Indeed, a higher percentage of partial verdicts were returned in the latter county than in Lancashire, another county with a large number of indictments and executions.

Turning finally to the sentences that were passed on those convicted across the four counties, Table 2.6 shows that the majority received either a sentence of death (38%) or one of imprisonment/hard labour (35%).

Only around one in five received a sentence of transportation, although technically this percentage would have been higher when pardoned capitally convicted felons were included among them. It is

Table 2.5 The number and percentage of guilty and partial verdicts handed down for various crime types in four English county assizes, 1760–1830[b]

Crime	*Cornwall*		*Kent*		*Lancashire*		*Oxfordshire*		*Total*	
	Guilty	*Partial*	*Guilty*	*Partial*	*Guilty*	*Partial*	*Guilty*	*Partial*[a]	*Guilty*	*Partial*
Burglary	55 (60%)	36 (40%)	317 (65%)	168 (35%)	338 (77%)	100 (23%)	95 (87%)	14 (13%)	805 (72%)	318 (28%)
Larceny (to value, not private, etc.)	423 (98%)	8 (2%)	2906 (94%)	181 (6%)	545 (99%)	6 (1%)	460 (80%)	16 (20%)	4334 (95%)	211 (5%)
Housebreaking	58 (76%)	18 (24%)	276 (72%)	110 (28%)	42 (81%)	10 (19%)	43 (86%)	7 (14%)	419 (74%)	145 (26%)
Larceny in dwelling house	44 (90%)	5 (10%)	174 (74%)	62 (26%)	71 (89%)	9 (11%)	21 (75%)	7 (25%)	310 (79%)	83 (21%)
Highway robbery	23 (79%)	6 (21%)	327 (96%)	12 (4%)	238 (96%)	11 (4%)	–	–	588 (95%)	29 (5%)
Larceny from the person	13 (81%)	3 (19%)	74 (91%)	7 (9%)	38 (81%)	9 (19%)	–	–	125 (87%)	19 (13%)
Total	616 (89%)	76 (11%)	4074 (88%)	540 (12%)	1272 (90%)	145 (10%)	619 (93%)	44 (7%)	6581 (89%)	805 (11%)

[a]Partial verdicts are only shown in the Crown Books for the Oxford Circuit between the years 1760 and 1801
[b]Partial verdicts for murder and infanticide are not shown here as they will be discussed in detail in Chapter 3

Table 2.6 The sentences passed at four English county assizes, 1760–1830

County	*Sentence*				*Total*
	Death	*Transportation*	*Prison/hard labour*	*Other*	
Cornwall	337 (35%)	160 (16.5%)	354 (36.5%)	119 (12%)	970 (100%)
Kent	1789 (33%)	1007 (18%)	2139 (39%)	548 (10%)	5483 (100%)
Lancashire	1346 (50%)	555 (21%)	695 (26%)	80 (3%)	2676 (100%)
Oxfordshire	339 (39%)	217 (25%)	288 (32%)	33 (4%)	877 (100%)
Total	3811 (38%)	1939 (19%)	3476 (35%)	780 (8%)	10,006[a]

[a]The sentences for 62 guilty verdicts are not shown in the sources (nine are missing from Kent and 53 from Oxfordshire)

interesting to note in light of King and Ward's image of ripples in a pond that that the percentage of felons receiving a capital sentence actually increased the further that one moved away from the southeast. Whereas a third of convicted felons received a sentence of death in Kent, 35 and 39% were similarly sentenced in Cornwall, while in Lancashire half of those found guilty were sentenced to death. Moreover, in Essex, only around 21–22% of convicted felons between 1740 and 1819 received a sentence of death.[51] A convicted felon in Lancashire during this period was thus much more likely to receive a sentence of death than in any of the other counties. Indeed, he or she was also much more likely to receive one than in the neighbouring county of Cheshire, where only a third of convicted felons received a sentence of death and just under 40% one of imprisonment.[52]

Sex, Crime and Justice in Georgian England

Over the last forty or so years, there has developed a substantial historical literature on females in the criminal justice system during the eighteenth and nineteenth centuries.[53] Mirroring the contemporary criminological literature, the broad consensus among historians is that females appeared before the courts in much smaller numbers than males, and that they tended to have been charged with comparatively less serious (and often non-capital) offences. Females only constituted 12.5 and 24% of those indicted in Cheshire and at the Old Bailey respectively between 1760 and 1830.[54] Similarly, just over one in five of those indicted in Surrey between 1663 and 1802 were female (21%).[55] Males also constituted the majority of those indicted for property offences in Surrey and Sussex

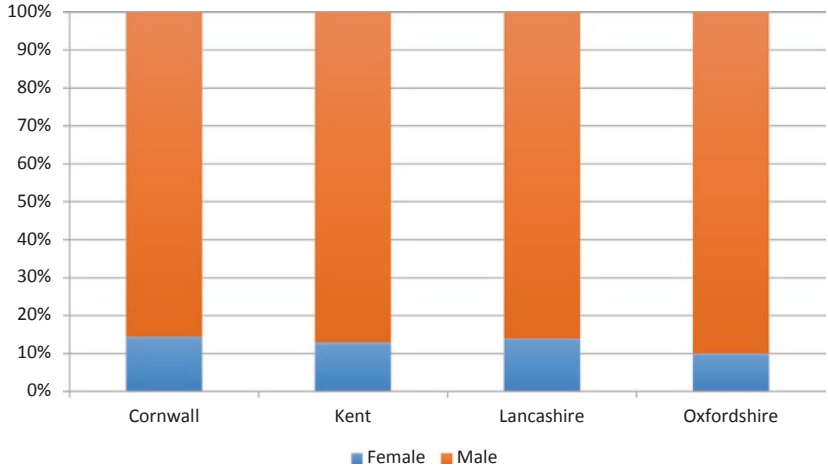

Fig. 2.5 The percentage of males and females indicted at four English county assizes, 1760–1830

over a similar period (1660–1800: 76 and 87% respectively), also comprising 87% of indicted property offenders in Essex between 1740 and 1804.[56] Males also constituted the majority of persons indicted for theft in the northeast of England between 1718 and 1820 (the percentages ranging from 75% in Durham to 79% in Northumberland respectively).[57]

Across the four English counties, almost 90% of indicted persons were males (ranging from 85.5% in Cornwall to 90% in Oxfordshire). Indeed, three-and-a-half times more males were indicted in Kent alone than the total number of females across all four counties (see Fig. 2.5).

Several explanations have been proposed by historians of crime to account for this state of affairs. The most obvious explanation is that perhaps females committed less crime than their male peers, either because they lacked the motivation or the opportunity to do so. Females' socialisation and association with the domestic sphere may, in other words, have served both to inculcate patriarchal notions of female passivity and restricted opportunities for engaging in criminal activities outside of the household. They may also have lacked the physical strength or skill with horses and weapons that were a pre-requisite for those engaging in crimes such as burglary, horse-stealing or highway robbery. If they were involved in such crimes, it was typically by assisting their husbands or menfolk or acting as lookouts. Females' low-level crimes, such as petty

larceny, may also have been easier to hide than the more serious property offences typically committed by males. In addition, victims and investigating magistrates may also have been reluctant to prosecute females for such offences, believing instead that they were better dealt with informally within the family or community rather than being pursued through the courts. This latter outcome may have been particularly the case when either victim or magistrate believed that the female in question had been forced into crime because of poverty or vulnerability. Such females, may thus have been seen, as King has suggested, as more "troubled" than "troublesome" by the courts; "as more vulnerable and more motivated by economic difficulties not of their own making":

> Pleas of poverty, unemployment, and economic vulnerability made by females may have received a more sympathetic hearing because women were highly marginalised in the eighteenth-century labour market, being forced into lower-paid, low-status, and less secure types of employment. Judges and jurors may therefore have been willing to treat economic hardship as a real mitigating factor in cases involving women, particularly if they were mothers with young children who depended wholly or mainly upon them.[58]

There is, however, some debate among historians concerning the question of whether female offending, as recorded in court records, was comparatively higher in the past than in the present day. In an influential article published in the early-1990s, Malcolm Feeley and Deborah Little argued that the proportion of females involved in the criminal justice process as both offenders and prosecutors has declined significantly from the late-seventeenth century. Whereas females comprised just over 30% of those indicted at the Old Bailey in 1687 (and over 40% of those indicted in 1735), by 1912 this had fallen to less than 10%. Similarly, the percentage of females indicted at the Surrey quarter sessions fell from almost 60% in 1700 to 20% in 1850. These trends, Feeley and Little argued, cannot be explained as a consequence of selective reporting, policing or jurisdiction changes, but, instead, stem from changes over the period in the social and economic worlds inhabited by females.[59]

The "vanishing female" thesis, has not, however, received universal acceptance. In a wide-ranging critique, Peter King argued that the Old Bailey was atypical, and that there was little evidence of a long-term decline in female offenders outside of London. In the Essex courts, for example, the percentage of female offenders fell by less than 2% between 1740 and 1837 (15.1–13.6%), while in Berkshire over a similar period

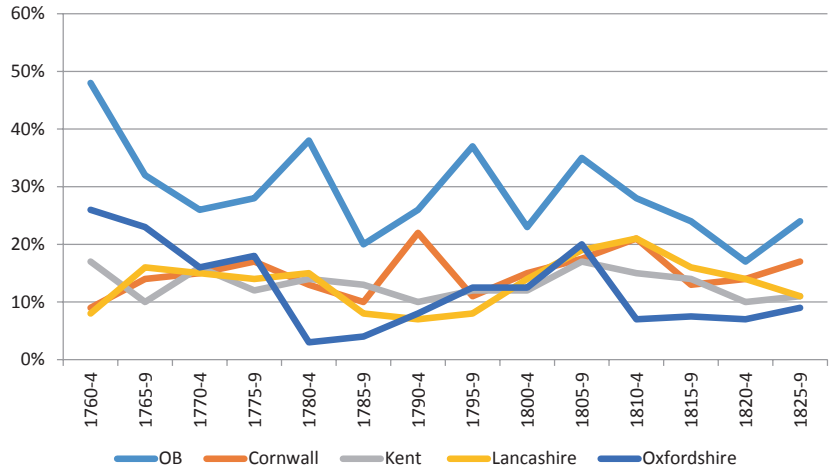

Fig. 2.6 The mean percentage of female offenders indicted in four English county assizes, 1760–1830 compared with the Old Bailey (The Old Bailey data (sampled every five years) have been taken from Appendix Table A2 of Feeley and Little's article.)

(1740–1847) it fell by less than 1% (15.9–15.1%). In Cornwall, the percentage of females among indicted property offenders grew over the same period from 21.4 to 23.1%.[60] The data from the four English counties summarized in Fig. 2.6 provides mixed evidence in regard to the "vanishing female" thesis.

Between 1760–1764 and 1825–1829, the percentage of females indicted at the Old Bailey halved from 48% to 24%. Over the same period, the percentage indicted at the Kent and Oxfordshire assizes also declined, markedly so in the latter case: from 17% and just over a quarter (26%) to 11 and 9% respectively. In contrast, the percentage indicted at the Cornwall assizes increased from 9 to 19%, while the Lancashire assizes saw a more modest increase of just 3% (from 8 to 11%). Again, it is difficult to ascertain any pattern in the data. On one level, it appears that the percentage of females indicted only declined in the southeast as far north as Oxfordshire, and that the further north or west one moved the larger the percentage of females were indicted. However, this thesis runs into difficulties when Cheshire is compared with Lancashire: where the latter county witnessed an increase in the percentage of females

indicted, over the same period the percentage of females indicted in the former county instead declined by 5% (from 12% to 7%).

Historians are in broad agreement, however, over the most common trial outcome for females in the eighteenth and early-nineteenth century criminal justice system. A wide range of evidence shows that females stood a greater likelihood of being acquitted, and, if convicted, typically received lighter sentences than males. Between 1660 and 1800, 53% of males indicted for property offences in Surrey were convicted compared with 40% of females. Females were also more likely to receive a partial verdict then males for property offences (22% compared with 14%).[61] Males were also much more likely to stand trial for property offences and receive a guilty verdict than females at the Old Bailey during the late-eighteenth and early-nineteenth centuries. Between 1780 and 1820, 61% of males indicted for property offences were convicted compared to 44% of females. Just under two-thirds of males indicted for larceny had guilty verdicts returned against them compared to just under half of females (64% and 47% respectively). Females indicted for pickpocketing or shoplifting were also two-and-a-half times less likely to stand trial and a third more likely to be acquitted if tried. Over a similar period, females indicted for robbery on the Home Circuit were more than twice as likely to be acquitted and four times more likely to receive a partial verdict.[62] In contrast, in Cheshire between 1760 and 1830, men were only slightly more likely to be convicted than females (63%/61%), although they were slightly less likely to stand trial than males either because the grand jury returned an ignoramus verdict (9%/7%) or because the prosecutor failed to attend court (4%/3%).[63]

Again, these trends in prosecution and sentencing were echoed in the four counties (see Table 2.7). Pearson Chi Square tests indicated that females were more likely to be acquitted than males.[64] They were also slightly more likely to have the indictment against them dismissed by a grand jury or because the prosecutor did not pursue the matter in court. While there were some slight variations among the counties to these general patterns, these were not significant ones. For example, a slightly larger percentage of males had the indictment against them dismissed due to lack of prosecution in Oxfordshire and Cornwall (0.5 and 1% difference respectively), while a slightly higher percentage of males in Lancashire had the indictment against them dismissed by a grand jury than females (3.5%)—see Table 2.8.

Table 2.7 The verdicts handed down to males and females at four English county assizes, 1760–1830

County	*Sex*	*Verdict*					*Total*
		Ignoramus	*No prosec.*	*Not guilty*	*Guilty*	*Other*	
Cornwall	Male	193 (11%)	98 (6%)	540 (31%)	850 (49%)	51 (3%)	1732 (100%)
	Female	40 (14%)	14 (5%)	118 (40%)	120 (41%)	3 (1%)	295 (100%)
Kent	Male	827 (10%)	189 (2%)	2205 (26.5%)	4870 (58.5%)	237 (3%)	8328 (100%)
	Female	163 (13.5%)	29(2%)	373 (31%)	622 (51%)	22 (2%)	1209 (100%)
Lancashire	Male	382 (9.5%)	108 (3%)	1163 (29%)	2333 (58%)	49 (1%)	4035 (100%)
	Female	43 (6%)	38 (6%)	242 (35.5%)	343 (50%)	16 (2%)	682 (100%)
Oxfordshire	Male	142 (10%)	65 (5%)	332 (24%)	854 (61%)	16 (0.5%)	1409 (100%)
	Female	21 (13.5%)	7 (4.5%)	52 (33%)	76 (49%)	0	156 (100%)
Total	Male	1544 (10%)	460 (3%)	4240 (27%)	8907 (57%)	353 (2%)	15,504 (100%)
	Female	1161 (50%)	88 (4%)	88 (4%)	267 (11%)	41 (2%)	2342 (100%)

Table 2.8 The sentences passed on males and females at four English county assizes, 1760–1830

County	*Sex*	*Sentence*				*Total*
		Death	*Transportation*	*Prison/hard labour*	*Other*	
Cornwall	Male	309 (36%)	144 (17%)	293 (35%)	104 (12%)	850 (100%)
	Female	28 (23%)	16 (13%)	61 (51%)	15 (13%)	118 (100%)
Kent	Male	1690 (35%)	908 (19%)	1804 (37%)	462 (9%)	4864 (100%)
	Female	99 (16%)	99 (16%)	335 (54%)	86 (14%)	619 (100%)
Lancashire	Male	1233 (53%)	458 (20%)	568 (24%)	74 (3%)	2333 (100%)
	Female	113 (33%)	97 (28%)	127 (37%)	6 (2%)	343 (100%)
Oxfordshire	Male	332 (41%)	194 (24%)	259 (32%)	26 (3%)	811 (100%)
	Female	7 (11%)	23 (35%)	29 (44%)	7 (11%)	66 (100%)
Total	Male	3564 (40%)	1704 (19%)	2925 (33%)	666 (8%)	8859 (100%)
	Female	247 (21%)	235 (21%)	551 (48%)	114 (10%)	1147 (100%)

Across all four counties, males typically received harsher sentences than females. Almost double the percentages of males were sentenced to death than females, while over 15% more females received a sentence of imprisonment than males. Females were also slightly more likely to receive both a sentence of transportation (typically for seven years) as well as some other form of punishment, such as a fine or a whipping. The only slight variations from these trends were that the Cornwall and Kent assizes sentenced a smaller percentage of females to periods of transportation than males, and that males were slightly more likely to receive another form of punishment in Lancashire than in any of the other counties. The differences in the sentences passed on both sexes reflected the different types of crime for which they were typically indicted. Males were typically indicted most often for those serious property offences that caused most concern among contemporaries and that, concomitantly, attracted the heaviest sentences.[65] For example, females constituted just 2, 3 and 7% of those indicted for highway robbery, horse-stealing and burglary respectively across the four counties. Similarly, as will be discussed in more depth in the next chapter, males constituted 85% of those indicted for—and 88% of those convicted of—murder. That said, however, there is some evidence to suggest that females tended to receive slightly lighter sentences than males when convicted of the same crimes. Some 98% of males convicted of burglary, for example, received a sentence of death compared to 97% of females, while 86% of males convicted of housebreaking were similarly sentenced compared to 80% of females. Similarly, 87% of males convicted of larceny in a dwelling house received a sentence of death compared to 78% of females. Males convicted of larceny from the person were also more likely to receive a death sentence than females convicted of the same crime (14–9% respectively). Moreover, as will also be discussed in more depth in the next chapter, capitally convicted female property offenders were significantly less likely to be hanged than their male counterparts.

Conclusion

In this chapter, I have traced the broad trends in indictments, verdicts and sentencing across the four English counties between 1760 and 1830. As was the case in England as a whole, over the course of this

seventy-year period, the number of persons indicted across the four counties increased exponentially. Kent and Oxfordshire, in particular, experienced increases in the number of persons indicted in excess of 200% over the period. On one level, this reflected population growth: the population of England as a whole also increased rapidly over the same period. Population size and growth however, can only provide a partial explanation for the patterning of indictments across the four counties. Not only was there no association between population size and the mean annual number of indictments across the four counties, but (with the exception of Cornwall) the latter typically increased faster than the former over the period. Two factors that strongly influenced the patterning of indictments were war and dearth. The majority of those indicted for property offences were indicted during peacetime and there was also a strong positive correlation between the cost of living in peacetime and the annual number of persons indicted for such offences. Whether this reflected a genuine increase in property offences during such periods, or a greater desire to prosecute property offenders during lean years is ultimately unknowable.

The majority of those who were indicted across the four counties were accused of some form of property offence, typically larceny. In contrast, only around one in seven were indicted for a crime against the person, the majority of whom were accused of murder. The majority were also male, with on average only one in ten of indicted persons being female. Only one in ten of indictments on average were dismissed by grand juries, with, again on average, two-thirds of those who faced a trial jury being convicted. That said, however, there were marked differences in both the percentage of ignoramus bills returned and the conviction rate across the four counties. Across all four counties, however, those indicted for property offences were more likely to have stood trial and significantly more likely to have been convicted than those indicted for crimes against the person. Of those who were convicted, on average just under two-fifths were sentenced to death, just over a third were sentenced to a period of imprisonment, and just under a fifth were sentenced to transportation. Reflecting broader trends, females were not only more likely to have their indictment dismissed by a grand jury, but were also significantly more likely to be acquitted. They were also generally more likely to receive lighter sentences, even when convicted of the same offence as males.

Notes

1. Peter King, *Crime, justice, and discretion in England 1740–1820* (Oxford, Oxford University Press, 2000), pp. 1–2.
2. King, *Crime, justice, and discretion, Op. Cit.*, Table 5.1.
3. John M. Beattie, *Crime and the courts in England 1660–1800* (Oxford, Clarendon Press, 1986).
4. John Walliss, 'Crime and justice in Georgian Cheshire: The Chester Court of Great Sessions 1760–1830', *Journal on European History of Law*, vol. 6, no. 1 (2015), 38–55, Figure 2.
5. By 1822 Kent was holding a third 'special winter assize' in December or January of each year.
6. Kent: $r = 0.887$ $p < 0.01$; Lancashire: 0.953 $p < 0.01$; and Oxfordshire: 0.871 $p < 0.05$.
7. Tony Wrigley, 'English county populations in the later eighteenth century', *The Economic History Review*, vol. 60, no. 1 (2007), 35–69, esp. Table 5.
8. On the population of Cornwall see John Rule, 'The laboring miner in Cornwall, c. 1740–1870: A study in social history' (PhD thesis, University of Warwick, 1971), pp. 5–8; Bernard Deacon, 'Population change in Cornwall, 1801–41' (2007), https://ore.exeter.ac.uk/repository/bitstream/handle/10036/19915/PopulationchangeinCornwall1801-41.pdf?sequence=1&isAllowed=y (accessed 20 February 2017).
9. Mary Dobson, 'Population, 1640–1831', in Alan Armstrong (ed.), *The economy of Kent 1640–1914* (Woodbridge, The Boydell Press, 1996), pp. 5–29.
10. C. B. Phillips and J. H. Smith, *Lancashire and Cheshire from AD 1540* (London, Routledge, 1994).
11. Gwenda Morgan and Peter Rushton, *Rogues, thieves and the rule of law: The problem of law enforcement in north-east England* (London, Routledge, 1998); Beattie, *Crime and the courts, Op. Cit.*
12. J. M. Beattie, 'The pattern of crime in England 1660–1800', *Past & Present*, vol. 62, no. 1. (1974), 47–95; See also Beattie, *Crime and the courts, Op. Cit.*; Frank McLynn, *Crime and punishment in eighteenth-century England* (London, Routledge, 1989), Chapter 17; Thomas Plint, *Crime in England: Its relation, character and extent as developed from 1801 to 1848* (London, Charles Gilpin, 1851), pp. 41–81.
13. King, *Crime, justice and discretion in England, Op. Cit.*
14. Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.*
15. Douglas Hay, 'War, dearth and theft in the eighteenth century: The record of the english courts', *Past & Present*, vol. 95 (1982), 117–60.

16. Arthur N. Gilbert, 'Army impressment during the war of Spanish Succession', *The Historian*, vol. 38, no. 4 (1976), 689–708. As early as the sixteenth century, Sir Walter Raleigh was claiming that a foreign war was "like a potion of rhubarb to waste away choler from the body of the realm" (quoted in M. S. Anderson, *War and society in Europe of the old regime, 1618–1789* (Stroud, Sutton Publishing Limited, 1998), p. 29). The Duke of Wellington went further, describing his troops as being composed of "the mere scum of the earth", adding:

    > People talk of their enlisting from their fine military feeling – no such thing. Some of our men enlist from having got bastard children – some from minor offences – many more for drink; but you can hardly conceive such a set brought together, and it really is wonderful that we should have made them the fine fellows they are (quoted in Edward J. Cross, *All for the King's shilling: The British soldier under Wellington, 1808–1814* (Norman, OK, The University of Oklahoma Press, 2010), p. 31).

17. Hay, 'War, dearth and theft', *Op. Cit.*, pp. 141–42.
18. For a discussion of the economic impact of the Revolutionary and Napoleonic wars, see Kevin O'Rourke, 'The worldwide economic impact of the French Revolutionary and Napoleonic wars, 1793–1815', *Journal of Global History*, 1 (2006), 123–49.
19. See James Sharpe, *Dick Turpin: The myth of the English highwayman* (London, Profile Books, 2005), Chapter 2.
20. Following Beattie, I have classified years of war or peace as those in which the country was at war or peace respectively on the first day of the year (see *Crime and the courts, Op. Cit.*, p. 215, ft. 22).
21. www.oldbailey.org.
22. For a broader discussion, see G. E. Mingay, *Parliamentary enclosure in England: An introduction to its causes, incidence and impact* (London, Longman, 1997).
23. J. M. Falkner, *A history of Oxfordshire* (London, Elliot Stock, 1899); Mary Jessup, *A history of Oxfordshire* (Chichester, Phillimore & Co Ltd, 1975); 'Social and economic history', in *A history of the county of Oxford: Volume 2*, ed. William Page (London, Victoria County History, 1907), pp. 165–213. *British History Online*, http://www.british-history.ac.uk/vch/oxon/vol2/pp165-213 (accessed 17 May 2016).
24. Jessup, *A history of Oxfordshire*; David Eastwood, 'Communities, protest and police in early nineteenth-century Oxfordshire: The enclosure of Otmoor reconsidered', *Agricultural History Review*, vol. 44, no. 1. (1996), 33–46.
25. Peter Brandon and Brian Short, *The south east from AD 1000* (London, Longman, 1990); Gordon Mingay, 'Agriculture', in Frederick Lansberry (ed.), *Government and politics in Kent, 1640–1914* (Kent, The Boydell

Press), pp. 51–83. On the overall standard of living during the period, see also Thomas Lill Richardson, 'The standard of living controversy 1790–1840, with special reference to agricultural labourers in seven English counties' (PhD thesis, University of Hull, 1977).

26. Board of Agriculture, *The agricultural state of the kingdom, in February, March and April 1816* (London, Sherwood, Neely & Jones, 1816), pp. 128, 134, 136.
27. Nigel Yates, Robert Hume, and Paul Hastings, 'Religion and society' in *Kent, 1640–1914* (Kent, The Boydell Press, 1994); D. A. Baugh, 'The cost of poor relief in south-east England, 1790–1834', *The Economic History Review*, vol. 28, no. 1 (1975), 50–68.
28. A. E. Newman, 'The old poor law in east Kent, 1606–1834: A social and demographic analysis' (PhD thesis, University of Kent at Canterbury, 1979), Table 8.19. This trend was not always the case, however: The percentage of poor households declined in the rural parish of Eastry and increased in the urban parish of St. Marys over the same periods.
29. E. J. Hobsbawm and George Rude, *Captain Swing* (London, Penguin, 1973), p. 98.
30. John Rule, '"The tinners are rising": Food rioting in Cornwall, 1737–1847', in John Rule (ed.), *Cornish cases: Essays in eighteenth and nineteenth century social history* (Santa Barbara, CA, Clio Publishing, 2006), pp. 36–74.
31. Rule, 'The labouring miner in Cornwall c. 1740–1870', *Op. Cit.*; John Rowe, *Cornwall in the age of the industrial revolution* (St Austell, Cornish Hillside Publications, 1993); Roger Wells, 'The revolt of the south west, 1800–1: A study in English popular protest', in John Rule and Roger Wells (eds.), *Crime, protest and popular politics in southern England 1740–1850* (London, The Hambledon Press, 1997), pp. 17–51; Rule, "The tinners are rising", *Op. Cit.*
32. Duncan Bythell, *The handloom weavers: A study in the English cotton industry during the industrial revolution* (Cambridge, Cambridge University Press, 1969); C. B. Phillips and J. H. Smith, *Lancashire and Cheshire from AD 1540* (London, Longman, 1994).
33. J. L. Hammond and Barbara Hammond, *The skilled labourer 1760–1832* (London, Longmans, & Green, and Co., 1995 [1919]), p. 110; Robert G. Hall, 'Tyranny, work and politics: The 1818 strike wave in the English cotton district', *International Review of Social History*, XXXIV (1989), 433–70.
34. Elizabeth W. Gilboy, 'The cost of living and real wages in eighteenth century England', *The Review of Economics and Statistics*, vol. 18, no. 3 (1936), 134–43; Elizabeth Boody Schumpeter, 'English prices and public finance, 1660–1822', *The Review of Economics and Statistics*, vol. 20,

no. 1 (1938), 21–37 (see especially the appendix for details of goods included). This approach is not without its critics, however: see, Joanna Innes and John Styles, 'The crime wave: Recent writing on crime and criminal justice in eighteenth-century England', *Journal of British Studies*, vol. 25, no. 4, 380–435.

35. Hay, 'War, death and theft', *Op. Cit.*
36. Beattie, *Crime and the courts*, *Op. Cit.*
37. Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.*, Figure 2.
38. The red dotted line shows the average for both types of goods in a given year. The Schumpeter-Gilboy Index uses 1700 as a base figure ($I = 100$), but for the sake of visual comparison in the figure the base figure of 100 was set to 0.
39. Kent: $r = 0.420$ $p < 0.01$; Lancashire: $r = 0.612$ $p < 0.01$.
40. Cornwall: $r = 0.820$ $p < 0.001$; Kent: $r = 0.684$ $p < 0.001$; Lancashire $r = 0.878$ $p < 0.001$; and Oxfordshire $r = 0.623$ $p < 0.01$.
41. Douglas Hay and Nicholas Rogers, *Eighteenth-century English society: Shuttles and swords* (Oxford, Oxford University Press, 1997).
42. Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.*, www.oldbaileyonline.org.
43. Morgan and Rushton, *Rogues, thieves and the rule of law, Op. Cit.*
44. V. A. C. Gatrell and T. B. Hadden, 'Criminal statistics and their interpretation', in Edward A. Wrigley (ed.), *Nineteenth century social history: Essays in the use of quantitative methods for the study of social data* (Cambridge, Cambridge University Press, 1972), pp. 336–96.
45. Cf. Beattie, *Crime and the courts, Op. Cit.*
46. Cornwall: $\chi^2 = 56.4$ $(\mathrm{df} = 1)$ $p = < 0.001$; Kent: $\chi^2 = 92.6$ $(\mathrm{df} = 1)$ $p = < 0.001$; Lancashire: $\chi^2 = 175.7$ $(\mathrm{df} = 1)$ $p = < 0.001$; and Oxfordshire: $\chi^2 = 24.5$ $(\mathrm{df} = 1)$ $p = < 0.001$.
47. Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.*, Figure 5.
48. Beattie, *Crime and the courts*, Table 8.1.
49. Beattie, *Crime and the courts*, Table 8.3.
50. King, *Crime, justice & discretion*, *Op. Cit.*, Tables 7.1 and 7.2.
51. Peter King and Richard Ward, 'Rethinking the Bloody Code in eighteenth century Britain: Capital punishment at the centre and on the periphery', *Past & Present*, 228 (2015), 159–205; King, *Crime, justice and discretion in England, Op. Cit.*
52. Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.*, Figure 8.
53. See, for example, John Beattie, 'The criminality of women in eighteenth-century England', *Journal of Social History*, vol. 8, no. 4 (1975), 80–116; King, 'Gender, crime and justice in late eighteenth- and early-nineteenth-century England', in *Crime and law in England, 1750–1850: Remaking justice from the margins* (Cambridge, Cambridge University Press, 2009),

165–195; 'Gender and recorded crime. The long-term impact of female offenders on prosecution rates across England and Wales 1750–1850', in *Crime and law in England, Op. Cit.*, pp. 196–220; 'Female offenders, work and life-cycle change in late-eighteenth-century London', *Continuity and Change*, vol. 11, no. 1 (1996), 61–90; Shani d'Cruze and Louise A. Jackson, *Women, crime and justice in England since 1600* (Houndmills, Palgrave, 2009).

54. Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.*, Figure 4; www.oldbaileyonline.org.
55. Beattie, 'The criminality of women', *Op. Cit.*, Table 1.
56. Beattie, *Crime and the courts in England, Op. Cit.*, Table 5.3; King, *Crime, justice and discretion in England, Op. Cit.*, Table 6.4.
57. Morgan and Rushton, *Rogues, thieves and the rule of law, Op. Cit.*, Table 3.3.
58. King, *Crime, justice and discretion, Op. Cit.*, p. 283.
59. Malcolm M. Feeley and Deborah Little, 'The vanishing female: The decline of women in the criminal justice process, 1687–1912', *Law and Society Review*, vol. 25, no. 4 (1991), 719–57. For a comparative analysis see also Malcolm Feeley, 'The decline of women in the criminal justice process: A comparative history', *Criminal Justice History*, vol. 15 (1994), 235–74. At the time of writing, 27% of all persons prosecuted in the courts in England and Wales are female—see, Ministry of Justice, *Statistics on women and the criminal justice system 2015* (London, Ministry of Justice, 2016), Figure 1.01.
60. King, 'Gender and recorded crime', *Op. Cit.*, Tables 6.1, 6.2, and 6.4.
61. Beattie, *Crime and the courts, Op. Cit.*, Table 8.8.
62. King, 'Gender, crime and justice', *Op. Cit.*
63. Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.*
64. Cornwall: $\chi^2 = 9.7$ $(\mathrm{df} = 1)$ $p = < 0.01$; Kent: $\chi^2 = 16.2$ $(\mathrm{df} = 1)$ $p = < 0.001$; Lancashire: $\chi^2 = 14.8$ $(\mathrm{df} = 1)$ $p = < 0.001$; and Oxfordshire $\chi^2 = 8.9$ $(\mathrm{df} = 1)$ $p = < 0.01$.
65. For discussions, see Beattie 'The criminality of women', *Op. Cit.*, *Crime and the courts, Op. Cit.*; d'Cruze and Jackson, *Women, crime and justice, Op. Cit.*

CHAPTER 3

"The Lottery of Justice": The Bloody Code in England, 1760–1830

Introduction

On 9 February 1810, Samuel Romilly stood before Parliament to propose three bills intended to repeal the capital statutes for stealing goods to the value of five shillings privately in a shop, or of forty shillings in a dwelling house or on a vessel in a navigable river. In the subsequent speech in support of the bills—a speech lauded by Leon Radzinowicz as "…one of the most brilliant ever delivered in Parliament on the subject of crime and punishment"—Romilly launched a sustained and wide-ranging critique of the capital code.[1] Noting that "the frequency of capital punishments appears to me, and, I am satisfied must appear to the whole House, to be a subject deserving of the most serious inquiry", Romilly pointed out how the "indiscriminate application" of the capital code had "long been the subject of complaint; and, like many other subjects of complaint, remains unaltered". Despite possessing probably the severest capital code in the world, he told his audience, the vast majority of those sentenced to death in England did not expiate for their crime on the gallows; "[a] lenity I am very far from censuring; on the contrary, I applaud the wisdom as well as the humanity of it". Indeed, only one of the 1872 persons indicted at the Old Bailey in the seven years prior to his speech for stealing in dwelling houses or shoplifting had been executed.

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While defenders of the current system celebrated the central role played within it by judicial discretion, he went on, this in fact led to a situation where men and women's lives were dependent on the whims of individual judges. Although he accepted that all judges were animated by a "perfect impartiality"; an "earnest desire in every case to prevent a failure of justice, to punish guilt, and to protect innocence…[without]…distinctions between the rich and the poor, the powerful and the unprotected":

> …they frequently do, and of necessity must, from the variety of opinions which must be found in different men, pursue very different courses. The same benevolence and humanity, understood in a more confined or a more enlarged sense, will determine one Judge to pardon and another to punish. It has often happened, it necessarily must have happened, that the very same circumstance which is considered by one Judge as a matter of extenuation, is deemed by another as a high aggravation of the crime. The former good character of the delinquent, his having come into a country in which he was a stranger to commit the offence, the frequency or the novelty of the crime, are all circumstances which have been upon some occasions considered by different Judges in those opposite lights: and it is not merely the particular circumstances attending the crime, it is the crime itself, which different Judges somehow consider in quite different points of view.

Speculating on the question of what impact "all these fluctuations of opinion and variations of habit…[had]…upon that portion of mankind, who are rendered to the Law only by the terror of punishment", Romilly then presented an image of a rational offender calculating the various possible outcomes of his actions within what he termed "the lottery of justice":

> After giving full weight to all the chances of complete impunity which they can suggest to their minds, they have besides to calculate upon the probabilities which there are, after conviction, of their escaping a severe punishment; to speculate upon what Judge will go to the Circuit, and upon the prospect of its being one of those who have been recently elevated to the Bench [and so would be more inclined to leniency]. As it has been truly observed, that most men are apt to confide in their supposed good fortune, and to miscalculate as to the number of prizes which are in the lottery of life, so are those dissolute and thoughtless men, whose evil dispositions Penal Laws are most necessary to repress, much too prone

> to deceive themselves in their speculations upon what I am afraid they accustom themselves to consider as the lottery of justice.[2]

In the last chapter, I traced the first stages of this putative lottery of justice from initial indictment through to sentencing. To recap, we saw that of the 18,030 persons indicted across the four counties between 1760 and 1830, 13% never stood trial either because an ignoramus verdict was returned against their indictment or a prosecutor failed to attend court. Of those who faced a trial jury, two-thirds were convicted, with on average one in ten receiving partial verdicts for some serious property offences. Just under two-fifths of those who were convicted were sentenced to death, while just under one-fifth received a sentence of transportation, and a third one of imprisonment. Males constituted the majority of those indicted across the four counties and, typically, were treated more harshly by the courts than females. Not only were males less likely to have the bill against them dismissed by grand juries, but they were also less likely to be acquitted than females. They also tended to receive harsher sentences than females, even when convicted of the same crimes.

In this chapter, I will turn my attention to its final and most serious stage: the outcomes for those felons who were sentenced to death in the four English counties. To this end, the chapter will be structured in three main sections. In the first section, I will briefly outline the patterns of sentences of death, executions and pardons across the four counties, focusing particularly on the patterns of numbers and percentages of capitally convicted felons going to the gallows over the seventy-year period. Following on from this, in the following two sections, I will explore the patterns of sentences of death, executions and pardons for those capitally convicted of serious crimes against the person (namely murder, infanticide and rape) and forms of property offences.

Patterns of Sentences of Death, Pardons and Executions in England

Between 1770 and 1830 an estimated 35,000 persons were sentenced to death across England and Wales, around one in five of whom were subsequently executed (7000 persons). For example, 22% of those sentenced to death at the Old Bailey over this period were executed

(1525 persons).[3] John Beattie found similarly high execution rates in Surrey, where 36% of those sentenced to death between 1749 and 1802 were executed.[4] Similarly, around a quarter (24%) of those sentenced to death for property offences on the Home Circuit between 1755 and 1815 were executed.[5] In contrast, executions were comparatively rare in Northumberland, with only 18% of capitally convicted felons being executed during the eighteenth century (78 executions after 1718).[6] Executions were rarer still in Cheshire, where only 12% of the 651 felons sentenced to death between 1760 and 1830 at that county's Great Sessions expiated for their crimes on the gallows.[7]

Less than one in five of those sentenced to death across the four counties were executed (see Table 3.1). The percentage of capitally convicted felons who were executed ranged from 12% in Oxfordshire to 19% in Kent. Again, Lancashire was slightly out of step with the neighbouring county of Cheshire; executing 18% of its capitally convicted felons compared to Cheshire's 12%.

There was little difference, however, between the counties in terms of the sex of executed felons. Not surprisingly, almost all executed felons were male; the percentage ranging from 88% in Cornwall to 97% in Kent (see Table 3.2). As we saw in the last chapter, not only were females indicted in smaller numbers than males, but they also tended to not be indicted for the most serious offences that could potentially

Table 3.1 The number and percentage of persons executed and pardoned at four English county assizes, 1760–1830

County	*Executed*	*Pardoned*	*Total*
Cornwall	49 (14.5%)	288 (85.5%)	337 (100%)
Kent	348 (19%)	1441 (81%)	1789 (100%)
Lancashire	240 (18%)	1106 (82%)	1346 (100%)
Oxfordshire	42 (12%)	297 (88%)	339 (100%)
Total	679 (18%)	3132 (82%)	3811 (100%)

Table 3.2 The number and percentage of males and females executed at four English county assizes, 1760–1830

County	*Male*	*Female*	*Total*
Cornwall	43 (88%)	6 (12%)	49 (100%)
Kent	338 (97%)	10 (3%)	348 (100%)
Lancashire	230 (96%)	10 (4%)	240 (100%)
Oxfordshire	40 (95%)	2 (5%)	42 (100%)
Total	651 (96%)	28 (4%)	679 (100%)

lead to a capital conviction. Moreover, they also stood a greater likelihood of having the indictment against them dismissed by a grand jury and, if tried, were more likely to be acquitted. All these factors together reduced the likelihood that female offenders would end up on the gallows (or, in some cases, at the stake). A higher proportion of capitally convicted females were executed than males, but this reflected both the relatively low numbers of females sentenced to death and, as we shall see below, that the majority of these had been convicted of murder, a crime for which mercy was rarely received.

Patterns of Executions and Pardons

Over the course of the eighteenth century and into the nineteenth, the proportion of capitally convicted property offenders who were spared the gallows increased. Indeed, this was one of the key arguments presented by opponents of the gallows in parliamentary debates from the turn of the nineteenth century. As Romilly told Parliament in his 1810 speech, increasingly judges were inverting the prerogative of mercy; rather than selecting those to whom mercy should be extended, they were, instead, selecting those that should be left for execution.[8] Between 1701–1725 and 1826–1830, the number of felons sentenced to death at the Old Bailey who received a pardon increased from 67 to 90%. Similarly, the percentage pardoned at the Chester Great Sessions increased from 82% between 1760–1764 to 96% between 1825–1829. Across England and Wales as a whole it increased from 81% in 1805 to 95% between 1826 and 1830.[9]

In a recent analysis focusing on the Old Bailey, Simon Devereaux has shown how the number of executions and percentage of capitally convicted felons going to their deaths in the capital between 1760 and 1829 progressed through four key stages. In the "opening phase" (1760–1783), the percentage of capitally convicted felons who were executed declined from above 60% to around 40%, although in absolute numbers, an increasing number of felons met their end on the gallows. Between 1783 and 1787, an increase in indictments and the end of transportation as a secondary punishment led to a boom in executions in the capital in terms of both actual numbers and the percentage of felons executed. There was then a decline in both the number and percentage of felons executed between 1788 and 1808 as transportation to Australia commenced and a series of reform-minded Lord Chancellors were appointed. Consequently, by 1808, executions in the capital were "approaching

extinction levels", with some capital crimes, such as returning from transportation or larceny from the person, effectively becoming dead letters. Finally, an increase in indictments coupled with official concerns about the rise of various forms of radicalism led to an increase in both the number and percentage of felons executed from 1809 until the end of the period.[10]

How does this compare with the pattern of execution and pardons in the four counties over the same period? In Cornwall (see Fig. 3.1a), both the number and percentage of felons executed increased from 1760 until 1770. Between 1770 and 1780 the number of executions then declined, while the percentage executed continued to increase until the middle of the decade before declining. Both the number and percentage of felons executed then rose, the latter markedly so over the course of the 1780s. Then, from 1790 until the end of the period, both the number and percentage executed broadly declined, although there were temporary blips in both during the first half of the 1810s and 1820s. In Kent (see Fig. 3.1b) the percentage of felons executed almost halved between 1760–1764 and 1770–1774 from 33 to 18%, while the number of executions declined by a third (from 28 to 9). There was then a sustained increase in both until 1790, reaching 51 executions (37% of those capitally convicted) between 1785–1789. As in Cornwall, the percentage of felons executed then declined for the remainder of the period, albeit, again, with temporary increases in the number executed between 1800–1804 and 1820–1824.

In Lancashire (see Fig. 3.1c), in contrast, both the number and percentage of felons increased from 1760 until the turn of the nineteenth century, reaching 43 executions (47% of capital convictions) between 1800–1804. From 1800 until the end of the period, the percentage of felons executed declined markedly, while the number of executions declined at a slower rate. The second decade of the nineteenth century saw an increase in the number of executions (from 29 to 44), before rapidly falling for the remainder of the period. Finally, in Oxfordshire (see Fig. 3.1d), the number of executions remained relatively stable for the entire period, never increasing above an average of one per year (during the 1780s) and typically being a lot lower. Between 1760–1764 and 1770–1774, the percentage of felons dying on the gallows declined from over a third of those capitally convicted to fewer than 10%, before increasing rapidly until the end of the century. During the 1790s, all six of those sentenced to death expiated for their crimes on the gallows.

Fig. 3.1 **a** The number and percentage of persons executed at the Cornwall county assizes, 1760–1830. **b** The number and percentage of persons executed at the Kent county assizes, 1760–1830. **c** The number and percentage of persons executed at the Lancashire county assizes, 1760–1830. **d** The number and percentage of persons executed at the Oxfordshire county assizes, 1760–1830

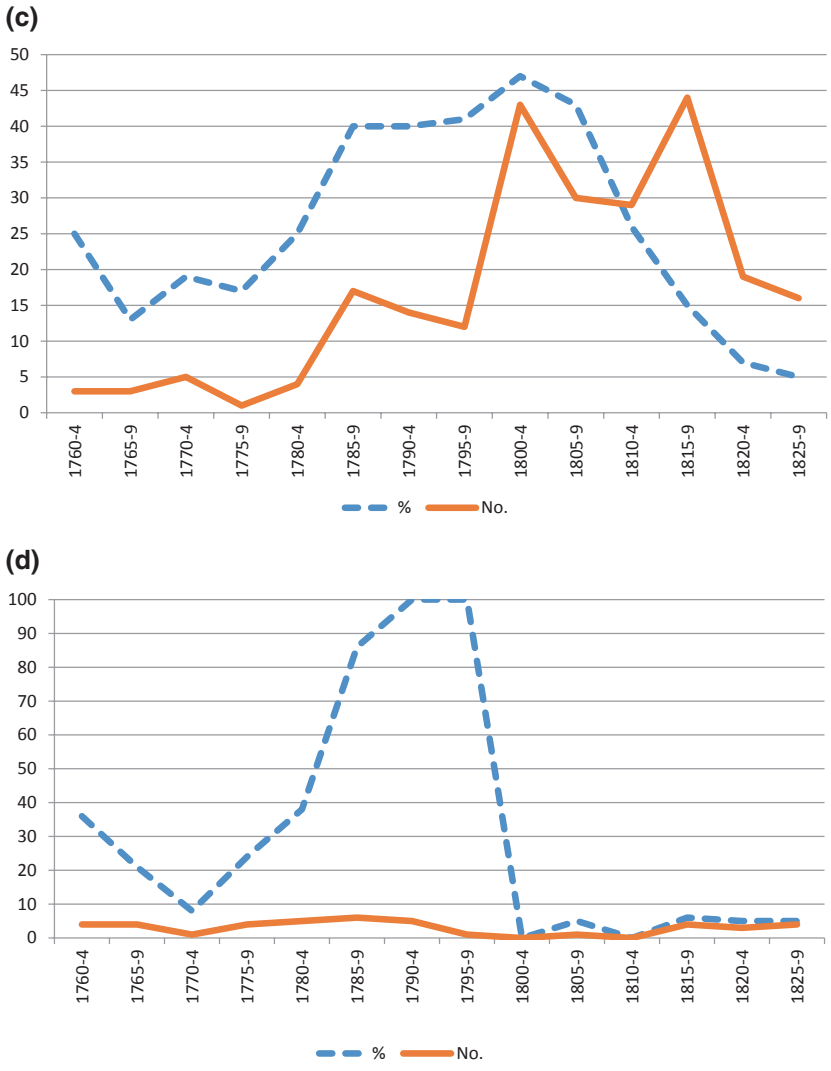

Fig. 3.1 (continued)

For the remainder of the period, the percentage of felons executed then declined markedly, reaching 4% by 1830.

The experience of the Bloody Code in each of the four counties would thus have been radically different from that in the capital, and, in some ways, from each other (see Fig. 3.2). During the 1760s, a Londoner would have had the opportunity to witness an average of twenty executions per year. By the 1780s, this would have more than doubled to on average fifty per year, with one year (1785) seeing 93 executions in the capital. Two decades later, the number of executions in the capital fell to an average of only ten per year and by the end of the period, the mean annual number of executions was only slightly higher than at the beginning of the period (22 executions). Such sanguinary heights would have been unrecognisable to a resident of the four counties. In Cornwall and Oxfordshire, for example, the annual number of executions only reached an average of one per year in the 1780s. In the year that a Londoner could have seen 93 felons die on the gallows, a resident of Cornwall and Oxfordshire would have had the opportunity to see one and two felons respectively meet this fate in their counties. Kent and Lancashire also witnessed increases in the average annual number of executions between 1760–1769 and 1780–1789; in

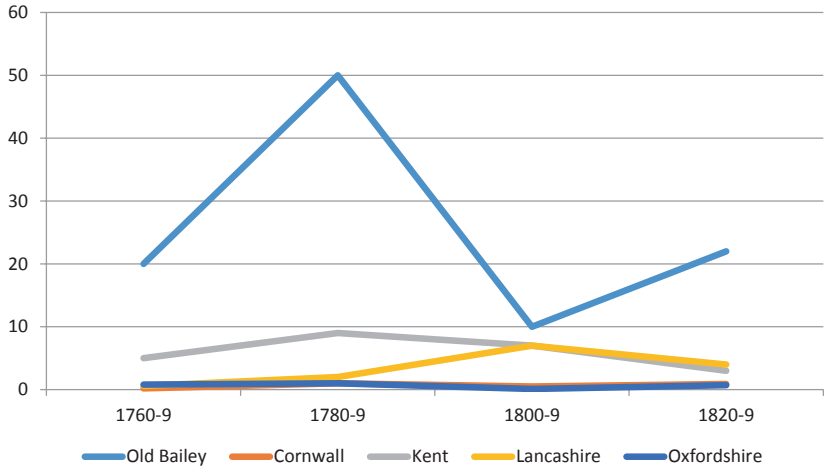

Fig. 3.2 The mean annual number of executions at the Old Bailey and in four English counties, 1760–1830

both counties the number of felons expiating for their crimes on the gallows doubled from five (4.6) to nine and less than one to two respectively. At the turn of the century, the annual number of executions in Kent had declined slightly while that in Lancashire had increased markedly. Between 1800 and 1809, the mean annual number of felons dying on the gallows in each county was identical (seven executions). By the 1820s, the mean annual number of felons going to the gallows in Kent had declined to below that at the beginning of the period, whereas in Lancashire it had increased almost six-fold. Despite this, however, over six times the number of felons were executed in London than in Lancashire between 1820–1829.

Crimes Against the Person: Murder, Infanticide and Rape

Murder

Over the last half-century or so a growing historiography has developed on long-term trends in violent crime in Europe. While acknowledging the methodological problems and gaps in the data, historians are in agreement that patterns of violent crime, particularly homicide, have declined markedly across Europe from the Middle Ages to the present day. Reviewing the evidence in the early 1980s, Ted Gurr concluded that the homicide rate in England declined from the thirteenth century to the present day from 20 to under 1 per 100,000 population. More recently, Manuel Eisner has posited that the homicide rate in England halved from 2.3 per 100,000 during the first half of the eighteenth century to 1.4 per 100,000 in the second half of the century, before increasing slightly between 1800 and 1824 to 1.5.[11]

While there are no statistics on patterns of violent crimes across England and Wales prior to the nineteenth century, patterns of convictions and executions across assize circuits during the second half of the eighteenth century can be obtained from the *1819 Report from the Select Committee on Criminal Laws*. Between 1775 and 1804, 57 and 53 persons were sentenced to death for murder in London and Middlesex and on the Home Circuit respectively. On the Western Circuit and Norfolk Circuit, 81 and 31 persons respectively were similarly sentenced. The great majority of these persons expiated for their crimes on the gallows; the percentages ranging from 81% (43 persons) of those capitally

Table 3.3 The number of persons indicted and convicted of murder as well as the number and percentage of ignoramus and partial verdicts at four English county assizes, 1760–1830

County	*Number indicted*	*Number and % ignoramus*	*Number and % guilty manslaughter*	*Number and % guilty*	*Number and % executed*
Cornwall	148	8 (5%)	45 (30%)	14 (9%)	14 (9%)
Kent	232	33 (14%)	45 (19%)	47 (21%)	46 (20%)
Lancashire	271	58 (21%)	54 (20%)	31 (11%)	27 (10%)
Oxfordshire	40	6 (15%)	1 (2.5%)	7 (17.5%)	7 (17.5%)
Total	691	105 (15%)	145 (21%)	99 (14%)	94 (14%)

convicted on the Home Circuit to all of those convicted on the Norfolk Circuit (31 persons).[12] More detailed statistics on the pattern of indictments, convictions and executions for the early decades of the nineteenth century, albeit not for individual circuits, can be gleaned from parliamentary statistics. Between 1810 and 1829, some 1345 persons were indicted for murder across England and Wales, only a quarter of whom were capitally convicted (339 persons). Almost all of those who were sentenced to death, however, were subsequently executed (291 persons or 86% of those convicted).[13]

Table 3.3 shows that only a small proportion of the 691 persons indicted for murder across the four counties were executed (14%). Broadly, 15% of persons indicted for murder were filtered out by a grand jury, and of those that stood trial, a quarter were convicted of manslaughter. Only 17% of those tried (14% of those indicted) were convicted of murder, almost all of whom were subsequently executed. Compared to their peers in other counties, Lancashire grand juries filtered significantly more of those accused of murder out of the process by returning ignoramus bills against them. Just over a fifth of persons indicted for murder in Lancashire over the period had the bill against them dismissed by a grand jury, compared with just 5% in Cornwall and 14 and 15% in Kent and Oxfordshire respectively. Petty juries in Lancashire also returned a relatively high percentage of manslaughter verdicts: with one in five of those tried for murder in the county being found guilty of manslaughter. Only 15% of those tried (11% of those indicted) for murder were capitally convicted and four of these persons were subsequently pardoned.[14]

In contrast, Cornish petty juries played the major role in murder trials. Whereas grand juries in that county returned all but 5% of murder indictments as true bills, petty juries for their part returned manslaughter verdicts in almost a third of cases, and only found one in ten of those who appeared before them guilty. None of those convicted, however, were subsequently pardoned.[15] In Kent and Oxfordshire, roughly similar percentages of indicted murderers were filtered out at the grand jury stage, but at this point differences emerged between the two counties. In Kent, around one in five of persons tried for murder were found guilty of the lesser charge while a quarter were convicted and executed (21 and 20% of those indicted respectively). In contrast, in Oxfordshire, only one man was convicted of manslaughter, with petty juries finding the greater majority of those who appeared before them accused of murder not guilty.

In their analysis of the geography of the Bloody Code during the late eighteenth century, King and Ward observed that the further one moved away from the capital during the period, the more that convicted murderers predominated on the gallows.[16] Between 1750 and 1775, for example, only 12 and 9% of executions in London and Essex respectively were those of convicted murderers, compared with 25 and 35% respectively on the western and northern assize circuits. Over the longer period, however, there was no clear pattern among the four counties in the proportion of executions in each county that were of convicted murderers. While the percentage increased the further that one moved away from the capital (see Table 3.4)—from 14% in Kent to 17% in Oxfordshire to 29% in Cornwall—Lancashire, again, bucked the trend with a lower percentage of executions for murder than in the capital (11%). Clearly, in this county, as in the capital, the gallows were largely a tool to preserve property rather than dispatch convicted murderers.

Table 3.4 The number of convicted murderers executed at four English county assizes as a percentage of all executions, 1760–1830

County	*Number of convicted murderers executed*	*As a % of all executions*
Cornwall	14	29
Kent	46	14
Lancashire	27	11
Oxfordshire	7	17

Table 3.5 The number of males and females indicted and convicted of murder as well as the number and percentage of ignoramus and partial verdicts at four English county assizes, 1760–1830

Sex	*Number ndicted*	*Number and % ignoramus*	*Number and % guilty manslaughter*	*Number and % guilty*	*Number and % executed*
Male	584	84 (14%)	141 (24%)	87 (15%)	82 (14%)
Female	107	21 (20%)	4 (4%)	12 (11%)	12 (11%)
Total	691	105 (15%)	145 (21%)	99 (14%)	94 (14%)

Males constituted the great majority of those both indicted and executed for murder (see Table 3.5). Across the four counties, only 15% of persons indicted and 13% of those executed for murder were female. Broadly, females tended to get filtered out earlier in the system than males, although males were significantly more likely to be convicted of manslaughter. A fifth of females indicted for murder had ignoramus verdicts returned against them, while a quarter of males who were tried for murder were convicted of the non-capital crime.

Infanticide

While those indicted for murder were largely male, infanticide was a crime exclusively committed by females. Under the terms of the 1624 "Act to Prevent the Destroying and Murthering of Bastard Children", any female who concealed the birth of a bastard child who was shortly afterwards discovered to be dead was assumed to have murdered it. Females accused of infanticide, in other words, were presumed guilty unless they could demonstrate that they had not concealed the pregnancy and birth, or could get a midwife to confirm that the child had indeed been born dead. Recognising the harshness of the law, grand and petty juries were reluctant to prosecute females accused of infanticide, seizing on any evidence of apparent innocence to return ignoramus bills and not-guilty verdicts respectively. Consequently, by the middle of the eighteenth century the law was only being fully enforced in those cases where there was unambiguous evidence that foul play had taken place. Writing in his *Commentaries on the Laws of England* in the late 1760s, for example, William Blackstone observed how "it has of years been usual with us in England, upon trials for this offence, to require

some sort of presumptive evidence that the child was born alive before the other constrained presumption (that the child whose death is concealed was therefore killed by his parent) is admitted to convict the prisoner".[17] Recognising this, Lord Ellenborough's Act of 1803 introduced the non-capital crime of concealment of birth, under the terms of which juries could return a lesser verdict in cases where a murder charge was impossible to prove.[18]

By its nature, infanticide was both a hidden crime and one difficult to successfully prosecute. Consequently, relatively few females were indicted for infanticide and of those who were, fewer still were successfully convicted and executed. In Surrey, seventy-six were indicted for the crime between 1700 and 1800, only three of whom were convicted and executed (4%). In the capital, 110 were indicted between 1714 and 1803, seventeen of whom were capitally convicted. Eighteen were indicted in Cheshire and three were executed between 1750 and 1800, while in the northeast of England only seven of the sixty-four females indicted between 1718 and 1820 were convicted. In contrast, none of those indicted in Staffordshire, which saw one indictment per year on average between 1743 and 1802, were convicted.[19]

Only 130 females were indicted for infanticide across the four counties over the seventy-year period (see Table 3.6). Just under half of these, however, were indicted in Lancashire; where sixty were charged with the crime. Outside of Lancashire, indictments for infanticide were relatively rare: in the seven decades between 1760 and 1830, on average just under one female was indicted per year in Lancashire, in Cornwall it was one every two years, in Kent one every three years, while in Oxfordshire it was one every eight years. Comparatively few females indicted for infanticide had the bill against them dismissed by a grand

Table 3.6 The number of females indicted and convicted of infanticide as well as the number of ignoramus verdicts at four English county assizes, 1760–1830

County	*Number indicted*	*Number and % ignoramus*	*Number and % guilty concealing (1803+)*	*Number and % guilty*	*Number and % executed*
Cornwall	37	1 (3%)	2 (5%)	3 (8%)	3 (8%)
Kent	24	1 (4%)	1 (4%)	3 (12.5%)	2 (8%)
Lancashire	60	9 (15%)	15 (25%)	2 (3%)	1 (2%)
Oxfordshire	9	0	0	3 (33%)	2 (22%)
Total	130	11 (8%)	18 (14%)	11 (8%)	8 (6%)

jury, and therefore had to stand trial for their lives (8%). As was the case with murder, a larger percentage of ignoramus verdicts were returned against indictments for infanticide in Lancashire than in any other counties (15%). Indeed, grand juries in Oxfordshire returned all nine of the indictments that they considered as true bills, while those in Kent and Cornwall returned as true bills all but one of those that they considered. Of the 119 females who stood trial, eighteen were convicted after 1803 of the lesser crime of concealing the birth of their child while eleven were convicted as charged (15 and 9% of those tried). Less than half of those convicted of infanticide, however, were executed and, as across England generally, executions for the crime were extremely rare across the four counties. Three females were executed for infanticide in Cornwall during the period, while Kent and Oxfordshire witnessed only two executions over the entire period. Only two females were convicted of infanticide in Lancashire, one of whom (Alice Ridley in 1762) expiated for her crime on the gallows.

Rape

Writing in his *History of the Pleas of the Crown*, the seventeenth-century jurist Matthew Hale famously argued that although rape was "a most detestable crime, and therefore ought severely and impartially to be punished with death", it was also "an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent".[20] Echoing the trends seen with females indicted for infanticide, relatively few males were indicted for this crime and fewer still were successfully convicted. Only forty-two males were indicted for rape in Surrey between 1660 and 1802 (an average of three per year), and of these only five were convicted (12% or one every twenty-eight years). Similarly, of the 203 males indicted at the Old Bailey between 1730 and 1800, only 23 were found guilty (11%). Conviction rates, however, were much higher in Cheshire: of the thirty-four males indicted between 1760 and 1830, thirteen (34%) were convicted. A large proportion of those indicted had the bill against them dismissed by a grand jury or because the prosecutrix failed to attend court. Almost half of those indicted in Surrey had ignoramus bills returned against them, while in Cheshire almost as many males went untried, with almost a quarter of cases being aborted because of the absence of a prosecutrix (23.5%). Similarly, only a third of males accused of rape in northeast England

between 1779 and 1799 were ever tried, with 11% of trials being aborted for this reason.[21]

Without doubt, the low number of indictments for rape reflected the difficulties facing females who wished to pursue their alleged attackers for legal redress. Not only did they have to try and convince a jury that the act had not been consensual, but had to do so within a patriarchal system in which their submission was seen as evidence of consent. Indeed, the fact that they had been attacked could be seen as evidence that they lead an unchaste life and were therefore an unreliable witness. As Anna Clark has noted, at the heart of the rape trial during this period was a paradox: on the one hand, juries concurred with Hale that those guilty of the crime should be punished to the severity of the law for attacking female chastity, but on the other "the violated woman had lost her credibility as a prosecutrix along with her chastity…juries hesitated to hang a man for rape on the testimony of a woman who admitted publically that she was unchaste and therefore unworthy".[22] The only ways in which this paradox could be resolved were when the prosecutrix claimed that she had fought off her attacker and thereby preserved her chastity, when her family prosecuted the case, or when the victim was a child and therefore too young to consent. Juries would also be aware of the potential risk that the prosecution may have been brought for malicious intent, possibly as a way of extorting money from the alleged attacker. Consequently, many, possibly the majority, of females chose to opt for informal redress, settling the matter out of court with an apology from the attacker along with a small sum of compensation.[23]

Again, as elsewhere across England, comparatively few males were indicted for rape across the four counties (see Table 3.7): the number indicted ranging from on average around one per year in Kent, to one

Table 3.7 The number of males indicted and convicted of rape as well as the number of ignoramus verdicts at four English county assizes, 1760–1830

County	*Number indicted*	*Number and % ignoramus*	*Partial verdict*	*Number and % guilty and sentenced to death*	*Number and % executed*
Cornwall	27	5 (19%)	0	2 (7%)	0
Kent	77	14 (18%)	1 (1%)	13 (17%)	7 (9%)
Lancashire	46	13 (28%)	0	11 (24%)	5 (11%)
Oxfordshire	11	2 (18%)	1 (9%)	1 (9%)	0
Total	161	34 (21%)	2 (1%)	27 (17%)	12 (7%)

every eighteen months in Lancashire, one ever two years in Cornwall, to one ever six years in Oxfordshire. On average around a fifth of those indicted were filtered out at the grand jury stage, with similar percentages being filtered out in Cornwall, Kent and Oxfordshire. Again, as with murder and infanticide, a significantly higher percentage of those males indicted for rape in Lancashire had the indictment against them dismissed by grand juries than in the other counties (28%). The vast majority of males accused of rape, however, were filtered out by petty juries: only 17% of those indicted (or 21% of those tried) were convicted by a trial jury. Here, though, there were marked differences between the counties: those with the highest number of indictments also had the highest percentage of guilty verdicts. Whereas only 7 and 9% of those indicted in Cornwall and Oxfordshire respectively (or 9 and 11% of those tried) were convicted, 17 and 24% of those indicted in Kent and Lancashire received this verdict (or 21 and 33% of those tried). It is also notable that Kent and Lancashire were the only counties where convicted rapists expiated for their crime on the gallows (seven and five males respectively), suggesting that in counties where relatively large numbers of men were indicted and convicted for the crime, judges were willing to leave more of them for execution. These executions would, however, still have occurred relatively infrequently: a resident of Kent would have had the opportunity to witness on average one per decade over the period, while a resident of Lancashire would have had the opportunity on average every fourteen years.

As Anna Clark suggested, females were significantly more likely to successfully prosecute males who they accused of forms of sexual assaults other than rape. While on average only 17% of males indicted for rape were convicted, 53% were convicted of sexual assault (see Table 3.8). Between just under a third and over half of males indicted for assault with intent to ravish or attempted rape (or between 44% and two-thirds of those tried) were convicted, typically receiving a period of imprisonment. In each of the four counties, a higher percentage of males were convicted of sexual assault than for rape. This was particularly notable in Cornwall, where more than eight times the percentage of males were convicted of the former crime than the latter. There were also interesting differences between the counties in terms of the percentage of ignoramus verdicts returned by grand juries for both crimes. While grand juries in Kent and Oxfordshire returned lower percentages of ignoramus verdicts for rape indictments

Table 3.8 The verdicts passed on males accused of sexual crimes against females other than rape at four English county assizes, 1760–1830

County	*Total*	*Verdict*			
		Ignoramus	*No prosecution*	*Not guilty*	*Guilty*
Cornwall	19 (100%)	0	2 (11%)	6 (32%)	11 (58%)
Kent	13 (100%)	3 (23%)	1 (8%)	5 (38%)	4 (31%)
Lancashire	69 (100%)	1 (1%)	1 (1%)	26 (38%)	41 (59%)
Oxfordshire	13 (100%)	7 (54%)	0	2 (15%)	4 (31%)
Total	114 (100%)	11 (10%)	4 (3%)	39 (34%)	60 (53%)

than for sexual assault, those in Lancashire and Cornwall returned a higher percentage of the latter. Indeed, grand juries in Oxfordshire returned over three times more ignoramus verdicts for sexual assault than they did for rape (54%/18% or 7/2 indictments). We cannot thus conclude from the evidence that grand juries as a whole demanded a higher standard of evidence to return true bills against capital rape indictments than those for sexual assault.

Property Offences

General Patterns

As we saw in the last chapter, four out of every five persons indicted across the four counties between 1760 and 1830 had been charged with a property offence. Just under half of these had been indicted for larceny, although large numbers were also indicted for serious capital offences, such as burglary (12%), highway robbery (8%) or forms of fraud and forgery or monetary offences (10%). Those indicted for property offences were significantly more likely to have a true bill returned against them and to be convicted than those indicted for crimes against the person. However, they were not always more likely to receive a death sentence: 58 and 39% of convicted property offenders in Lancashire and Cornwall were sentenced to death over the period compared to just 18 and 14% of those capitally convicted of a crime against the person. In contrast, in Kent and Oxfordshire, those convicted of both types of offence were equally likely to have been sentenced to death (33 and 39% each respectively).

Table 3.9 The number and percentage of persons sentenced to death, executed and pardoned for property offences at four English county assizes, 1760–1830

County	*Total*	*Executed*	*Pardoned*
Cornwall	306 (100%)	28 (9%)	278 (91%)
Kent	1650 (100%)	261 (16%)	1389 (84%)
Lancashire	1201 (100%)	193 (16%)	1008 (84%)
Oxfordshire	320 (100%)	32 (10%)	288 (90%)
Total	3477 (100%)	514 (15%)	2963 (85%)

Only a relatively small percentage of property offenders expiated for their crimes on the gallows. Across the four counties, only between 9 and 16% of capitally convicted property offenders suffered this fate (see Table 3.9). There was also a clear positive relationship between the number of property offenders sentenced to death in each county and the number and percentage that were subsequently executed. Lancashire and Kent saw both high numbers of capital convictions and high percentages of executions (16% each), while the opposite was the case in Cornwall and Oxfordshire (9 and 10% respectively). Lancashire was unique among the four counties for sentencing a high percentage of convicted property offenders to death (just under 60%), and sending a relatively high percentage of them to the gallows (16%). Indeed, in doing so, Lancashire was also out of step with neighbouring northern counties. In Cheshire, only 35% of indicted property offenders were sentenced to death, 9% of whom were subsequently executed, while in County Durham the percentages were 30 and 8% respectively.[24] It would thus appear, as King and Ward argue, that judges were more willing to extend mercy to capitally convicted felons in counties like Cornwall and Oxfordshire where there were both fewer indictments for property offences and fewer capital convictions than in counties such as Lancashire and Kent where the opposite state of affairs existed. The large numbers of persons both indicted and capitally convicted of property offences seemingly impressed upon the mind of judges that appropriate examples were required rather than excessive leniency.[25]

The majority of those sentenced to death and executed across the four counties for property offences had been convicted of either highway robbery or burglary. Together these two crime types accounted for 40 and 56% of those sentenced to death and executed respectively for property offences over the period. Forty-one horse thieves—one in ten of those

sentenced to death for the crime—also expiated for their crime on the gallows. This comes as no surprise: all three were crimes that generated a great deal of anxiety among contemporaries, not least as they were crimes that were perceived to be engaged in by gangs of hardened criminals rather than being crimes of desperation. Conversely, only 5 and 4% of those convicted of crimes widely seen by contemporaries as a crime of desperation—sheep and cattle stealing respectively—paid the ultimate price for their crimes.

The property offences that saw the highest percentage of convicted felons go to their deaths were not, however, a violent crime or necessarily a crime of desperation, but, rather, ones of skill and cunning: namely monetary offences and fraud and forgery (see Table 3.10). Only 4 and 6% of property offenders sentenced to death over the period had been convicted of fraud and forgery and monetary offences, but 30 and 31% of these respectively were subsequently executed: similar percentages as highway robbers. Again, this reflected the concern that these crimes generated among contemporaries. According to the philosopher William Paley, of all the forms of fraud, the "most noxious" were "forgeries, counterfeiting or diminishing of the coin, and the stealing of letters in the course of their conveyance" as they "deprive the public of

Table 3.10 The number and percentage of persons executed for different property offences at four English county assizes, 1760–1830

Crime type	*Death sentences*	*Number and % executed*
Burglary	786 (100%)	104 (13%)
Highway robbery	617 (100%)	184 (30%)
Horse stealing	403 (100%)	41 (10%)
Sheep stealing	390 (100%)	18 (5%)
Monetary offences	211 (100%)	66 (31%)
Housebreaking	358 (100%)	18 (5%)
Larceny in a dwelling house	293 (100%)	11 (4%)
Larceny	147 (100%)	22 (15%)
Fraud and forgery	124 (100%)	37 (30%)
Cattle stealing	76 (100%)	3 (4%)
Other	31 (100%)	4 (13%)
Robbery	22 (100%)	5 (23%)
Larceny from the person	17 (100%)	1 (6%)
Receiving	2 (100%)	0
Total	3477 (100%)	514 (15%)

accommodations, which not only improve the conveniences of social life, but are essential to the prosperity, and even the existence of commerce".[26] Forgery of financial instruments was thus, as one historian has put it, "less a form of theft than a life threatening assault upon the forms that sustained a commercial people".[27] Consequently, those convicted of forgery were typically shown little mercy: 61% of the 220 forgers sentenced to death in the financial heart of the county between 1775 and 1815, for example, died on the gallows.[28]

Table 3.11 shows the often-wide variations in the number and percentage of felons executed for each type of property offence in each of the four counties. Some counties saw no persons executed for certain property offences over the seventy-year period. No capitally convicted felon was executed for fraud and forgery, larceny, housebreaking, cattle stealing, larceny from the person or receiving stolen goods in Oxfordshire. Similarly, Lancashire saw no executions for sheep stealing, robbery, cattle stealing, larceny from the person or receiving. Cornwall too did not see a felon executed for larceny from the person or receiving. Perhaps

Table 3.11 The number and percentage of persons executed for different property offences at four English county assizes, 1760–1830

Crime type	*County*				*Total*
	Cornwall	*Kent*	*Lancashire*	*Oxfordshire*	
Highway robbery	5 (22%)	117 (36%)	51 (21.5%)	11 (34%)	184 (100%)
Burglary	7 (13%)	53 (17%)	38 (12%)	6 (7%)	104 (100%)
Monetary offences	1 (100%)	1 (8%)	63 (33%)	1 (17%)	66 (100%)
Horse stealing	1 (2.5%)	22 (11%)	11 (9%)	7 (16%)	41 (100%)
Fraud and forgery	1 (25%)	27 (43%)	9 (16%)	0	37 (100%)
Larceny	3 (21%)	7 (8%)	12 (27%)	0	22 (100%)
Housebreaking	2 (4%)	10 (4%)	6 (14%)	0	18 (100%)
Sheep stealing	5 (8%)	9 (4%)	0	4 (5%)	18 (100%)
Larceny in a dwelling house	1 (2.5%)	6 (4%)	3 (3%)	1 (6%)	11 (100%)
Robbery	1 (50%)	2 (14%)	0	2 (33%)	5 (100%)
Other	0	4[a] (14%)	0	0	4 (100%)
Cattle stealing	1 (8%)	2 (13%)	0	0	3 (100%)
Larceny from the person	0	1 (10%)	0	0	1 (100%)
Receiving	0	0	0	0	0
Total	28 (9%)	261 (16%)	193 (16%)	32 (10%)	514 (100%)

[a]These four males had been convicted of smuggling

the most notable feature of the table is almost all of the 103 persons executed for monetary offences and fraud and forgery were executed in Kent and Lancashire (100 executions): 63 of the 66 persons executed for monetary offences and 27 of the 37 executed for fraud and forgery went to the gallows in Lancashire and Kent respectively. The situation in Lancashire is even more noteworthy when we consider that over the same period only six felons were executed for either monetary offences or fraud and forgery in Cheshire.[29]

The large number of executions in England for monetary offences in Lancashire reflected both the reported scale of the crime in the county and the concomitant prosecution strategies adopted to address it. According to William D. Evans Esq., the barrister and vice-chancellor of the county palatine of Lancaster, in his evidence to the 1819 Select Committee on Criminal Laws, "The offence of forging, or rather of uttering of forged bank notes, is extremely frequent in [Lancashire], and more so there than anywhere else, except in the metropolis".[30] He explained that this stemmed from the fact that, because of the failure of a several provincial banks, Bank of England notes and coins were the only currency in circulation in the county. A recurring theme in the 1819 Select Committee Report was the reluctance of victims to prosecute in cases of fraud or to assist the Bank of England in its prosecutions of offenders. "There is no offence in which the infliction of death seems more repugnant to the strong and general and declared sense of the Public, than forgery", its authors stated; "there is no other in which there appears to prevail a greater compassion for the offender, and more horror at capital executions".[31] The Bank of England was vigorous in its attempts to prosecute forgers, employing town constables in the provinces to investigate cases of forgery as well as offering rewards for successful prosecutions. Another strategy, adopted in Lancashire, was to employ magistrates' clerks to prosecute the crime rather than the alleged victim, who may have been reluctant to prosecute, knowing that a man or woman's life was at stake. According to Evans, this removed the tinge of "private malice" from the prosecution, making the prosecution an impersonal action between strangers rather than one between a potentially reluctant-to-prosecute victim and the alleged offender.[32] Judging by both the large number of indictments and executions for monetary offences in Lancashire during the period, this strategy would seem to have been a successful one.

Executions, Pardons and Population

The mean annual number of property offenders sentenced to death per head of population increased rapidly across all four counties over the period (see Fig. 3.3). Between the 1760s and the 1820s, the mean annual number sentenced to death in Kent and Oxfordshire increased by over 200% from 4.9 and 2.71 to 15.7 and 9.88 per 100,000 population respectively. In Cornwall, the increase was more modest, from 1.86 to 2.67 (43%), while Lancashire experienced an increase of over 450%, from 0.86 to 4.78.

In their analysis of the pattern of executions for property offences per head of population between 1750 and 1775, King and Ward showed how the number decreased the further one moved away from the capital. While the annual execution rate per 100,000 population for property offences was 2.01–3.85 in London and Middlesex, in Leicestershire it was 0.15–0.34, while in Westmorland, Durham and Northumberland and much of Wales it was 0.00–0.14.[33] The data summarized in Fig. 3.4 clearly confirms that their argument is correct over the longer period. With the sole exception of Oxfordshire in 1800–1809, as a rule between 1760 and 1830, the mean annual number of property offenders who

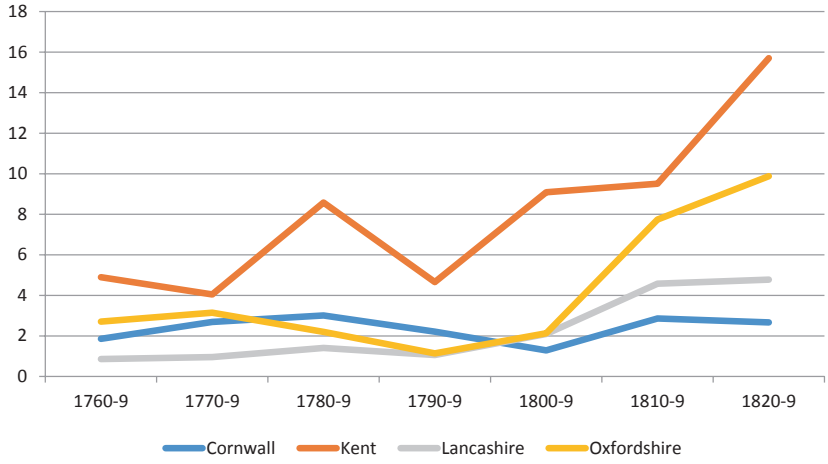

Fig. 3.3 Mean annual number of sentences of death for property offences per 100,000 population at four English county assizes, 1760–1830

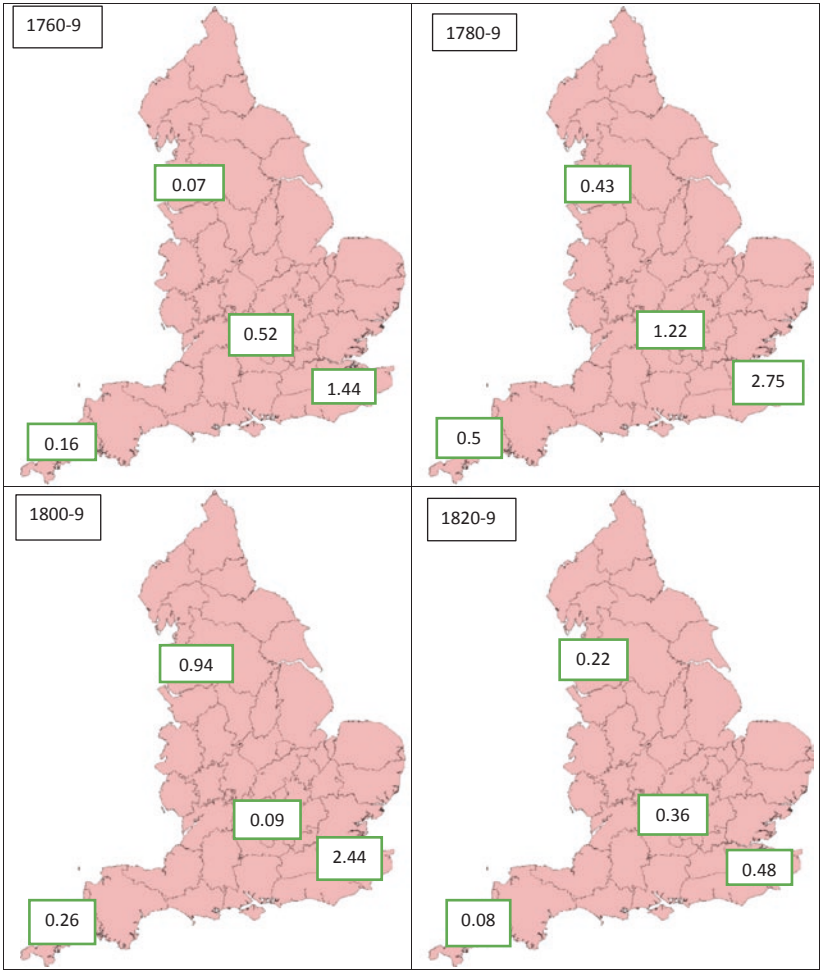

Fig. 3.4 The mean annual number of executions for property offences at four English county assizes, in the 1760s, 1780s, 1800s, and 1820s

died on the gallows decreased the further one moved away from the southeast. For example, between 1760 and 1769, the mean annual number of property offenders executed was 63% lower in Oxfordshire than in Kent, while the number executed in Lancashire was 86% lower than that

in Oxfordshire (or 95% lower than Kent). Meanwhile, the mean annual number executed in Cornwall was 69% lower than the number executed in Oxfordshire and 88% lower than that in Kent.

War, Dearth and the Gallows

More persons were indicted for property offences across the four counties during peacetime than during war. There was also a strong positive association between the cost of living during peacetime (measured by the Schumpeter-Gilboy price index) and the number of persons indicted for such offences. When the cost of living was high during peacetime, more persons were indicted for property offences and when it was lower (and during wartime), fewer persons were indicted for such offences. However, Pearson R tests indicated that there was no association between the cost of living (measured by the Schumpter-Gilboy index) and the annual number of property offenders sentenced to death in any of the four counties between 1760 and 1822. There was, however, a positive association between the cost of living and the annual number of property offenders executedin Lancashire, but not in any of the other counties.[34]

The majority of property offenders were sentenced to death during peacetime (2342 or 68%); the percentage thus sentenced ranging from a low of 64% in Cornwall and Kent to a high of 77% in Oxfordshire (see Table 3.12). However, the majority of such offenders expiated for their crimes during wartime (264 persons or 52%). A Pearson R test indicated that there was a positive association between the annual number of

Table 3.12 The number and percentage of property offenders sentenced to death and executed during periods of peace and war at four English county assizes, 1760–1830

County	*Sentences of death*		*Executions*	
	Peace	*War*	*Peace*	*War*
Cornwall	196 (64%)	108 (36%)	16 (8%)	12 (10%)
Kent	1030 (64%)	591 (36%)	121 (12%)	136 (23%)
Lancashire	870 (72%)	331 (28%)	85 (10%)	108 (33%)
Oxfordshire	246 (77%)	74 (23%)	24 (10%)	8 (11%)
Total	2342 (68%)	1104 (32%)	246 (48%)	264 (52%)

property offenders sentenced to death and the annual number executed in Cornwall, Kent and Lancashire, but not Oxfordshire.[35] The association was stronger during wartime than peacetime across all three counties. There was also a strong positive association between the annual number of property offenders sentenced to death and executed during peacetime in Lancashire.[36] That said, there were marked differences between the counties obscured by the overall totals and percentages. In the two counties with the largest numbers of executions, the majority of property offenders were executed during wartime, while in the two counties with the lowest numbers of executions, the majority were executed during peacetime. Some 53 and 56% of the property offenders executed in Kent and Lancashire respectively were executed during wartime, whereas 57 and 75% were executed in Cornwall and Oxfordshire respectively during peacetime.

Table 3.13 presents these trends in further depth, showing the number and percentage of property offenders executed during peace- and wartime for each broad type of property offence. While it was the case that the majority of property offenders were sentenced to death in peacetime but executed during periods of war, there were several

Table 3.13 The number and percentage of persons sentenced to death for various property offences during periods of peace and war at four English county assizes, 1760–1830

Crime type	*Peace*		*War*	
	Sentences of death	*Executions*	*Sentences of death*	*Executions*
Highway robbery	405 (66%)	101 (55%)	211 (34%)	83 (45%)
Burglary	587 (75%)	56 (54%)	198 (25%)	48 (46%)
Cattle stealing	57 (75%)	1 (33%)	19 (25%)	2 (67%)
Horse stealing	272 (67%)	17 (41%)	131 (33%)	24 (59%)
Larceny	47 (31%)	9 (41%)	103 (69%)	13 (59%)
Monetary offences	130 (62%)	24 (36%)	81 (38%)	42 (64%)
Larceny in a dwelling house	195 (67%)	4 (36%)	97 (33%)	7 (64%)
Housebreaking	275 (77%)	7 (39%)	83 (23%)	11 (61%)
Sheep stealing	282 (72%)	13 (72%)	108 (28%)	5 (28%)
Larceny from the person	6 (35%)	0	11 (65%)	1 (100%)
Fraud and forgery	66 (53%)	9 (24%)	58 (47%)	28 (76%)
Robbery	19 (86%)	5 (100%)	3 (14%)	0
Receiving stolen goods	1 (50%)	0	1 (50%)	0
Total	2342 (68%)	246 (48%)	1104 (32%)	264 (52%)

notable exceptions to this trend. Primarily, more highway robbers and burglars were executed during peacetime than during periods of war. This was the case across all four counties in the case of highway robbers, although in Kent slightly more burglars were executed during wartime.[37] This suggests that judges may have been responding to both the concern that such crimes generated among contemporaries and the large number of persons indicted and capitally convicted for such crimes by leaving large numbers of such felons to hang. The same might also have been the case with those sentenced to death for robbery: over the period, five of the nineteen felons capitally convicted of this offence were executed during peacetime while none of the three capitally convicted during war suffered the same fate. More convicted sheep stealers also expiated for their crimes on their gallows during peacetime across all of the counties (in both cases, the number executed represented 5% of those capitally convicted).[38] One possible explanation for this state of affairs is that seven of the thirteen sheep thieves executed during the years of peace had been sentenced to death in 1786 and 1787; years that experienced high numbers and percentages of property offenders suffering the ultimate penalty for their crimes. These thirteen felons may simply have been unfortunate to have been capitally convicted of a crime for which mercy was typically extended, in a period where property offenders were being shown little mercy.

Sex, Property Crime and the Gallows

Across the four counties, the majority of those both sentenced to death and executed for property offences were male. Again, this was not out of step with patterns across England during the period.

Between 1760 and 1830, only ninety-four females were executed for property offences across England, half of whom suffered for their crimes in the capital (see Table 3.14). While the majority executed in the capital had been convicted of larceny in a dwelling house and highway robbery (sixteen and twelve females respectively), the majority outside of the capital had been convicted of burglary and fraud and forgery (twelve and ten females respectively). No females were executed in the capital over the seventy-year period for larceny from the person, sheep stealing or horse stealing, while only two females were executed outside of the capital for highway robbery.[39]

Table 3.14 The number of females executed for property offences in London and English counties by crime type, 1760–1830 (see note 39 for source)

Crime type	*London*	*English counties*	*Total*
Larceny in a dwelling house	16	8	24
Highway robbery	12	2	14
Monetary offences	6	4	10
Fraud and forgery	6	10	16
Burglary	4	12	16
Larceny	2	3	5
Housebreaking	1	4	5
Larceny from the person	0	1	1
Sheep stealing	0	2	2
Horse stealing	0	1	1
Total	47	47	94

Males constituted 94 and 99% of the felons sentenced to death and executed respectively for property offences across the four counties (see Table 3.15). They were also executed for a much wider range of property offences than females, and were less likely to be pardoned. Only five females were executed for property offences over the seventy-year period: one female was executed in Kent in 1762 for fraud, while two were executed for monetary offences (1801, 1818) and larceny in a dwelling house (1806, 1808) in Lancashire. None of the females sentenced to death for property offences in Cornwall or Oxfordshire were subsequently executed.

Again, this seeming reluctance of judges to leave female property offenders to hang was not unique to the four counties. More than half of capitally convicted male property offenders were executed on the Home Circuit between 1782 and 1800, compared with just 20% of females. Similarly, a quarter of females sentenced to death in Surrey between 1660 and 1800 were subsequently executed compared with 43% of males. Indeed, only five females were executed in the county for property offences over that whole period. Likewise, only one female property offender sentenced to death at the Chester Court of Great Sessions was executed between 1760 and 1830.[40] As Beattie has observed, "…the effectiveness of hanging as an exemplary punishment depended on the offender who was providing the example. It was plainly more advisable to execute those whose death would confirm the

Table 3.15 The number and percentage of male and female property offenders sentenced to death, pardoned and executed at four English county assizes, 1760–1830

Crime	*Executed*		*Pardoned*		*Total*	
	Male	*Female*	*Male*	*Female*	*Male*	*Female*
Highway robbery	184 (30%)	0	418 (70%)	14 (100%)	602 (100%)	14 (100%)
Burglary	104 (14%)	0	653 (86%)	28 (100%)	757 (100%)	28 (100%)
Cattle stealing	3 (4%)	0	71 (96%)	2 (100%)	74 (100%)	2 (100%)
Horse stealing	41 (10%)	0	358 (90%)	4 (100%)	399 (100%)	4 (100%)
Larceny	22 (18%)	0	97 (82%)	31 (100%)	119 (100%)	31 (100%)
Monetary offences	64 (36%)	2 (6%)	112 (64%)	33 (94%)	176 (100%)	35 (100%)
Larceny in a dwelling house	9 (4%)	2 (4%)	237 (96%)	44 (96%)	246 (100%)	46 (100%)
Housebreaking	18 (5%)	0	312 (95%)	28 (100%)	330 (100%)	28 (100%)
Sheep stealing	18 (5%)	0	365 (95%)	7 (100%)	383 (100%)	7 (100%)
Larceny from the person	1 (7%)	0	13 (93%)	3 (100%)	14 (100%)	3 (100%)
Fraud and forgery	36 (32%)	1 (8%)	76 (68%)	11 (92%)	112 (100%)	12 (100%)
Robbery	5 (23%)	0	17 (77%)	0	22 (100%)	0 (100%)
Receiving stolen goods	0	0	2 (100%)	0	2 (100%)	0 (100%)
Total[a]	503 (16%)	5 (2%)	2731 (84%)	205 (98%)	3236 (100%)	210 (100%)

[a]Crime type "other" (four male executions) is not included

wisdom and justice of the law rather than those whose suffering might excite pity, perhaps even hostility".[41] While the sight of a female murderer expiating for her crime on the gallows was unlikely to generate any large degree of public sympathy, the same could not be said about a female property offender meeting the same end. Rather, it was highly likely that her death would not only fail to serve as an appropriate example, but might in fact undermine the "lesson of the scaffold" when the crowd felt some degree of sympathy for the woman and her plight. On one level, then, judges could justify pardoning almost all capitally convicted female property offenders on the grounds that their deaths would be counter-productive to the moral lesson that they wanted the gallows to communicate. However, on another level they could, anticipating

slightly King and Ward's thesis, argue that, as only comparatively small numbers of females were convicted and sentenced to death for property offences, it was also not necessary to execute large numbers to deter others.

Conclusion

How, then, might we characterize the final stage of the lottery of justice for those sentenced to death in the four counties between 1760 and 1830? The first point that can be drawn out is that the likelihood of whether a capitally convicted felon was executed was often determined by the county in which they were tried and convicted. A felon sentenced to death in Kent and Lancashire was, all things being equal, more likely to expiate for their crime on the gallows than one similarly sentenced in Oxfordshire and Cornwall. Whereas 19 and 18% of those capitally convicted in Kent and Lancashire were executed respectively, only 14.5 and 12% of those capitally convicted in Oxfordshire and Cornwall respectively met the same fate.

The period during which a particular felon was capitally convicted also affected the likelihood of whether or not they would suffer on the gallows. Those capitally convicted across the four counties during the 1780s, for example, were significantly more likely to be executed than those convicted after the turn of the nineteenth century. Between 1780–1789 and 1820–1829, the percentage of capitally convicted felons dying on the gallows in Kent and Lancashire, for example, declined rapidly from over a third (36 and 34% respectively) to 5 and 6% respectively. Similarly, the percentage executed in Cornwall and Kent declined from 19 and 55% to 12 and 5% over the same period. It was particularly unfortunate in retrospect to have been capitally convicted in Oxfordshire during the 1790s rather than a decade later. Whereas all six of those capitally convicted during the 1790s were executed, a decade later only one of the nineteen felons sentenced to death met this fate (5%).

The likelihood of whether a felon sentenced to death for a serious crime against the person expiated for their crime on the gallows depended largely on the crime for which they had been convicted. Across the four counties, as across England, little mercy was shown to those who had been convicted of murder. Only five of the 99 persons sentenced to death for murder across the four counties were spared the

gallows and received instead a sentence of transportation. In contrast, less than half of the eleven females sentenced to death for infanticide met their end on the gallows (45% or five females). Likewise, only twelve of the twenty-seven males sentenced to death for rape were subsequently executed (44%).

Whether or not a capitally convicted property offender went to the gallows was determined by a variety of factors, not least being where and when they were convicted. A property offender was almost twice as likely to be executed in Kent and Lancashire, for example, than in Cornwall and, as noted above, were significantly less likely to be pardoned during the 1780s than after 1800. They were also slightly less likely to be pardoned during wartime than during peacetime. The likelihood of whether or not a property offender hanged was also affected by the particular offence for which they had been convicted and their sex. Those convicted of monetary offences, fraud and forgery and highway robbery were more likely to expiate for their crimes on the gallows than those convicted of sheep stealing, housebreaking, cattle stealing or receiving stolen goods. Similarly, male property offenders were significantly more likely to be executed than female property offenders. Males were not only executed in greater numbers for property offences than females, but they were also eight times more likely to do so. They were also executed for a broader range of property offences than females. Only five females were executed for property offences across the four counties over the seventy-year period (or 2% of those capitally convicted), three of whom had been convicted of monetary offences or fraud and forgery.

Notes

1. Leon Radzinowicz, *A history of English criminal law and its administration from 1750, vol. 1: The movement for reform* (London, Stevens & Sons Ltd, 1948), p. 504.
2. Samuel Romilly, *The speeches of Sir Samuel Romilly in the House of Commons, in two volumes: Vol. I.* (London, James Ridgway and Sons, 1820), pp. 107, 113, 122–4, 126. For a discussion of the debate between Romilly and the defenders of judicial discretion, see Randall McGowen, 'The image of justice and reform of the criminal law in early nineteenth-century England', *Buffalo Law Review*, vol. 32, no. 1. (1983), 89–125.
3. V. A. C. Gatrell, *The hanging tree: Execution and the English people, 1770–1868* (Oxford, Oxford University Press, 1996).

4. John M. Beattie, *Crime and the courts in England 1660–1800* (Oxford, Clarendon Press, 1986), Table 10.1.
5. Peter King, *Crime, justice, and discretion in England 1740–1820* (Oxford, Oxford University Press, 2000), Table 8.5.
6. Gwenda Morgan and Peter Rushton, *Rogues, thieves and the rule of law: The problem of law enforcement in north-east England* (London, Routledge, 1998).
7. John Walliss, 'Crime and justice in Georgian Cheshire: The Chester court of great sessions 1760–1830', *Journal on European History of Law*, vol. 6, no. 1 (2015), 38–55, Figure 13.
8. Romilly, *The speeches of Sir Samuel Romilly, Op. Cit.*
9. V. A. C. Gatrell, *The hanging tree: Execution and the English people, 1770–1868* (Oxford, Oxford University Press, 1994), Appendix 2, Tables 1 and 2; Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.*, Figure 11.
10. Simon Devereaux, 'England's "Bloody Code" in crisis and transition: Executions at the Old Bailey, 1760–1837', *Journal of the Canadian Historical Association*, vol. 24, no. 2 (2013), 71–113, p. 91, Figure 3.
11. Ted Robert Gurr, 'Historical trends in violent crime: A critical review of the evidence', *Crime and Justice*, vol. 3 (1981), 295–353; Manuel Eisner, 'Long-term historical trends in violent crime', *Crime and Justice: A Review of Research*, vol. 30, 83–142, Table 1. See also Lawrence Stone, 'Interpersonal violence in English society 1300–1980', *Past & Present*, no. 101 (1983), 22–33; James Sharpe, *A fiery & furious people: A history of violence in England* (London, Random House Books, 2016).
12. Select Committee on Criminal Laws, *Report from the select committee on criminal laws relating to capital punishment in felonies*, 1819, VIII.1.
13. House of Commons, 'A Statement of the number of persons charged with criminal offences, who were committed to the different gaols in England and Wales 1805–18', 1819, XVII.305; 'Committals, Summary statements of the number of persons, charged to the different gaols of England and Wales 1820–26', 1826–27, XIX.183; 'Criminal Offenders England and Wales, 1824–30', 1830–31, XII.493.
14. Across the four counties, only five of the ninety-nine persons capitally convicted of murder were subsequently pardoned during the period. In Lancashire, Jurgen Lawrence and William Butterworth were both pardoned and transported for life (Lawrence) and fourteen years (Butterworth) in 1766 and 1771 respectively. In 1774 and 1799 John Jones and Samuel Houghton both had their sentences respited, and there is no record of a subsequent execution. In 1824 in Kent, Stephen Shelvy also received a pardon and was transported for life.

15. For a detailed discussion of patterns of prosecutions for violent crime in Cornwall during this period, see Peter King, 'Changing attitudes towards violence in the Cornish Courts, 1730–1830', in Peter King (ed.), *Crime and law in England, 1750–1850: Remaking justice from the margins* (Cambridge, CUP, 2009), pp. 255–80.
16. Peter King and Richard Ward, 'Rethinking the Bloody Code in eighteenth century Britain: Capital punishment at the centre and on the periphery', *Past & Present*, 228 (2015), 159–205.
17. William Blackstone, *Commentaries on the laws of England, vol. 4* (sixteenth edition) (London, A. Strahan, 1825), p. 198.
18. R. W. Malcolmson, 'Infanticide in the eighteenth century', in J. S. Cockburn (ed.), *Crime in England, 1550–1800* (Princeton, NJ, Princeton University Press, 1977), pp. 187–209; Mark Jackson, *New-born child murder: Women, illegitimacy and the courts in eighteenth-century England* (Manchester, Manchester University Press, 1996); Anne-Marie Kilday, 'Desperate measures or cruel intentions? Infanticide in Britain since 1600', in Anne-Marie Kilday and David Nash (eds.), *Histories of crime: Britain 1600–2000* (Houndmills, Palgrave, 2010), pp. 60–79; Anne-Marie Kilday, *A history of infanticide in Britain c. 1600 to the present* (Basingstoke, Palgrave, 2013).
19. Beattie, *Crime and the courts, Op. Cit.*, Table 3.6; Dana Rabin, 'Bodies of evidence, states of mind: Infanticide, emotion, and sensibility in eighteenth-century England', in Mark Jackson (ed.), *Infanticide: Historical perspectives on child murder and concealment, 1550–2000* (Surrey, Ashgate, 2002), pp. 73–92; J. R. Dickinson and J. Sharpe, 'Infanticide in early modern England: The Court of Great Sessions at Chester, 1650–1800', in Mark Jackson (ed.), *Infanticide: Historical perspectives on child murder and concealment, 1550–2000* (Surrey, Ashgate, 2002), pp. 35–51, Table 3.1; Morgan and Rushton, *Rogues, thieves and the rule of law, Op. Cit.*, Malcolmson, 'Infanticide in the eighteenth century', *Op. Cit.*
20. Matthew Hale, *The history of the pleas of the Crown*, vol. 1 (London, E. R. Nutt & R. Gosling, 1736), p. 635.
21. Beattie, *Crime and the courts, Op. Cit*, Table 3.7; Martin J. Wiener, *Men of blood: Violence, manliness, and criminal justice in Victorian England* (Cambridge, Cambridge University Press, 2006), Chapter 3; Anna Clark, *Women's silence, men's violence: Sexual assault in England 1770–1845* (London, Pandora, 1987).
22. Clark, *Women's silence*, *Op. Cit.*, p. 47.
23. Kim Stevenson, '"Most intimate violations": Contextualising the crime of rape', in Anne-Marie Kilday and David Nash (eds.), *Histories of crime: Britain 1600–2000* (Houndmills, Palgrave, 2010), pp. 80–99; On the

problems faced by prosecutrix see especially Wiener, *Men of blood, Op. Cit.*, pp. 78–84. On the issue of blackmail, see Antony Simpson, 'The "Blackmail Myth" and the prosecution of rape and its attempt in 18th century London', *The Journal of Criminal Law and Criminology*, vol. 77, no. 1 (1986), 101–50; Laurie Edelstein, 'An accusation easily made? Rape and malicious prosecution in eighteenth-century England', *The American Journal of Legal History*, vol. 42, no. 4 (1998), 351–90.

24. Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.* Figures for County Durham taken from the author's unpublished dataset for the county.
25. King and Ward, 'Rethinking the Bloody Code in eighteenth-century Britain', *Op. Cit.*
26. William Paley, *The Works of William Paley, complete in one volume* (London, T. Allman, 1833), p. 228.
27. Randall McGowen, 'Forgery discovered, or the perils of circulation in eighteenth-century society', *Angelaki*, vol. 1, no. 2 (1996), 113–30, p. 114. See also Randall McGowen, 'The Bank of England and the policing of forgery 1797–1821', *Past & Present*, no. 186 (2005), 81–116.
28. See the summary of the data from the 1819 Select Committee report on Criminal Laws presented in Clive Emsley, *Crime and society in England, 1750–1900* (fourth edition) (Harlow, Pearson, 2010), Table 10.2.
29. Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.*, Figure 13.
30. Select Committee on Criminal Laws, 'Report', *Op. Cit.*, p. 28.
31. Select Committee on Criminal Laws, 'Report', *Op. Cit.*, p. 13. See also Phil Handler, 'Forgery and the end of the "Bloody Code" in early nineteenth-century England', *The Historical Journal*, vol. 48, no. 3 (2005), 683–702.
32. Select Committee on Criminal Laws, 'Report', *Op. Cit.*, p. 29.
33. Cf. King and Ward, 'Rethinking the Bloody Code in eighteenth-century Britain', *Op. Cit.*
34. $r = 578$ $p < 0.001$. The association was higher during periods of peace ($r = 0.779$ $p < 0.001$) than during wartime ($r = 0.536$ $p < 0.01$).
35. Cornwall: $r = 347$ $p = < 0.01$; Kent: $r = 347$ $p = < 0.01$; and Lancs: $r = 620$ $p = < 0.001$.
36. Cornwall (war): $r = 0.822$ $p < 0.001$; Kent (war): $r = 0.822$ $p < 0.001$; and Lancashire (war): $r = 0.801$ $p < 0.001$; Lancashire (Peace): $r = 0.794$ $p < 0.001$.
37. The number of highway robbers executed in each county in peace and war respectively were: Cornwall (3/2), Kent (63/54), Lancashire (27/24), Oxfordshire (8/3). The number of burglars executed in each county in peace and war respectively were (4/3), Kent (25/28), Lancashire (22/16), Oxfordshire (5/1).

38. The number of sheep thieves executed in each county in peace and war respectively were: Cornwall (3/2), Kent (6/3), Lancashire (0), Oxfordshire (4/0).
39. Based on the lists compiled by David Mossop, found at http://www.capitalpunishmentuk.org/fem1735.html and http://www.capitalpunishmentuk.org/fempublic.html (accessed 12 May 2017).
40. King, *Crime, justice and discretion*, *Op. Cit.*, Table 8.7; Beattie, *Crime and the courts*, *Op. Cit.*, Table 8.9; Walliss, 'Crime and justice in Georgian Cheshire', *Op. Cit.*, Figure 14.
41. Beattie, *Crime and the courts, Op. Cit.*, p. 436.

PART II

Wales

CHAPTER 4

Crime and Justice in the Courts of Great Sessions: The Brecon Circuit 1760–1830

Introduction

On 15 September 1830, William Griffith was executed outside Beaumaris Gaol in Anglesey for the attempted murder of his wife, Mary. According to the report of the execution in *The Monmouth Merlin*, Griffiths had since his condemnation "manifested a strong fear of death, attended by occasional bursts of despair, during which he made bodily efforts, as if to escape from confinement" and, indeed, on the morning of his execution he had barricaded himself into the condemned cell with a wooden bench in an attempt to delay his death. Once prison guards had forced their way into the cell, Griffiths was secured "all the while uttering the most agonising cries and groans" and was dragged the few steps out to the scaffold that projected from the east wall of the gaol. Here he again attempted to delay his fate by resisting the executioner's attempts to put the halter around his neck and, once it had been successfully secured, trying to remove it until the drop fell. Griffith's death was, the newspaper concluded, instantaneous and the execution was witnessed by "an immense multitude".[1]

Griffith's crime and execution are hardly unique in the annals of Welsh crime history, although his was the first execution in Anglesey for murder for at least a century. Between 1735 and 1830, an estimated

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J. Walliss, *The Bloody Code in England and Wales, 1760–1830*,
World Histories of Crime, Culture and Violence,
https://doi.org/10.1007/978-3-319-74561-9_4

fifty-two males and three females were executed across Wales for murder; four of the males also having being sentenced to death for murdering their wife.[2] Rather, Griffith's execution is significant as it was the final execution in Wales of a felon who had been sentenced to death at one of the principality's Courts of Great Sessions. From their inception in 1542 following the Union of England of Wales until their abolition in 1830, Courts of Great Sessions had, like English assize courts, sat biannually in each of the twelve counties to prosecute felonies and misdemeanours in accordance with English law.[3] From the late-eighteenth century, a number of parliamentary complaints were made regarding the administration of the Great Sessions, and in 1829 a Parliamentary Report on the Common Law recommended that the Great Sessions be abolished. Consequently, in the following year, in the face of protests from across Wales and Cheshire, both were brought into the English assize circuit system.[4]

To date, historians of crime have largely ignored the Wales Courts of Great Sessions, despite the Court's records being remarkably well-preserved and the existence of a useful, albeit basic, online database of its gaol files from 1730 until 1830.[5] As Katherine Watson has observed, Wales is:

> …one of the most under-researched constituent nations of the United Kingdom. Indeed, in comparison with the extensive historiography of violence and criminal justice in England, there has been little research on the relationship of the Welsh people to the criminal justice system and less still examining gender, crime and violence in the Principality.[6]

Richard Ireland, in his recent history of crime and punishment in Wales concurs:

> The experience of Wales seems to be regarded as either inexplicably different to the position in England or as unproblematically the same, or (and I suspect that this is the most common position) it is simply not considered at all.[7]

In particular, the historiography of the Great Sessions and the Bloody Code is significantly smaller than that of the Bloody Code in England. To date only one monograph and less than a dozen articles and chapters

have been published on various aspects of the Bloody Code in Wales since the early 1980s.[8] This work reveals a picture that is both recognisable from the English experience discussed in the previous two chapters, but also in some ways radically different. Primarily, a recurring theme in the historiography is the seeming reticence of the Welsh to hang property offenders compared with their neighbours over the border. David J. V. Jones in his pioneering work on the Bloody Code in Wales, for example, noted not only "that those found guilty of a serious crime in eighteenth-century Wales might well have received more favourable treatment than their counterparts across the border", but that by the turn of the nineteenth century "the authorities did not need the death penalty or ceased in practice to regard many property offences as capital offences".[9] At a time when the Bloody Code was reaching its sanguinary heights in the capital (1809–1829), the Great Sessions sent only nine property offenders to the gallows (less than 3% of the total number sentenced to death in the principality during the period). By the mid-nineteenth century at least, Wales was popularly referred to as "the land of White Gloves" (*gwlad y menig gwynion*) in reference to the gloves that were given to visiting justices at maiden assizes, but it is clear that the appellation could have been given to the principality many years beforehand.

Another related theme in the historiography of the Great Sessions is their high acquittal rate when compared to English assizes and, in some cases, the seeming perversity of Welsh jury decision making.[10] While it is true, as we saw in Chapter 1, that English juries often returned partial verdicts to save convicted felons from the gallows, it would appear from both the comments of contemporaries and the subsequent historiography that both grand and petty juries in Wales were noted for their often perverse decision making. Supporting an attempt in the 1720s to remove two accused murderers from Pembrokeshire so that they could be tried at the Hereford assizes, the Court of King's Bench asserted that:

> …it was very difficult to have justice done in *Wales* by a jury of *Welshmen*, for they are all related to one another, and therefore would rather acquit a criminal than have the scandal that one of their name or relations should be hanged; and that to try a man for murder in Wales was like trying a man in Scotland for high treason, those crimes not much regarded in their respective places.[11]

Indeed, the situation would appear to have not improved over a century and a half later. According to the author of an article in the *Cornhill Magazine* in 1877:

> A man who is tried [in Wales] by a jury of his neighbours has always a splendid chance of escape, but if some of them happen to be also his fellow chapel-goers of the same denomination, his acquittal may, it is feared, be predicted with approximate certainty.[12]

Clearly, if these accounts are to be believed, Welsh jurors were considering far more than the evidence before them in court when they were assessing the guilt or innocence of their fellow countrymen.

In this chapter and the next, I will turn my attention to the administration of the Bloody Code in Wales, focusing on the Brecon Courts of Great Sessions. As in the previous chapters on England, I will begin in this chapter by tracing the criminal justice process that took some Welshmen and women from indictment through to sentencing. I will then, in the following chapter, focus on patterns of sentences of death and executions for crimes against the person and property offences. My approach in both chapters will be broadly comparative; while I will discuss the Welsh patterns of indictments, prosecutions, sentences of death and executions on their own terms, I will also compare them with the English patterns previously discussed. In doing so, I will be drawing together the threads of my analysis in preparation for my final concluding chapter.

Patterns of Indictments

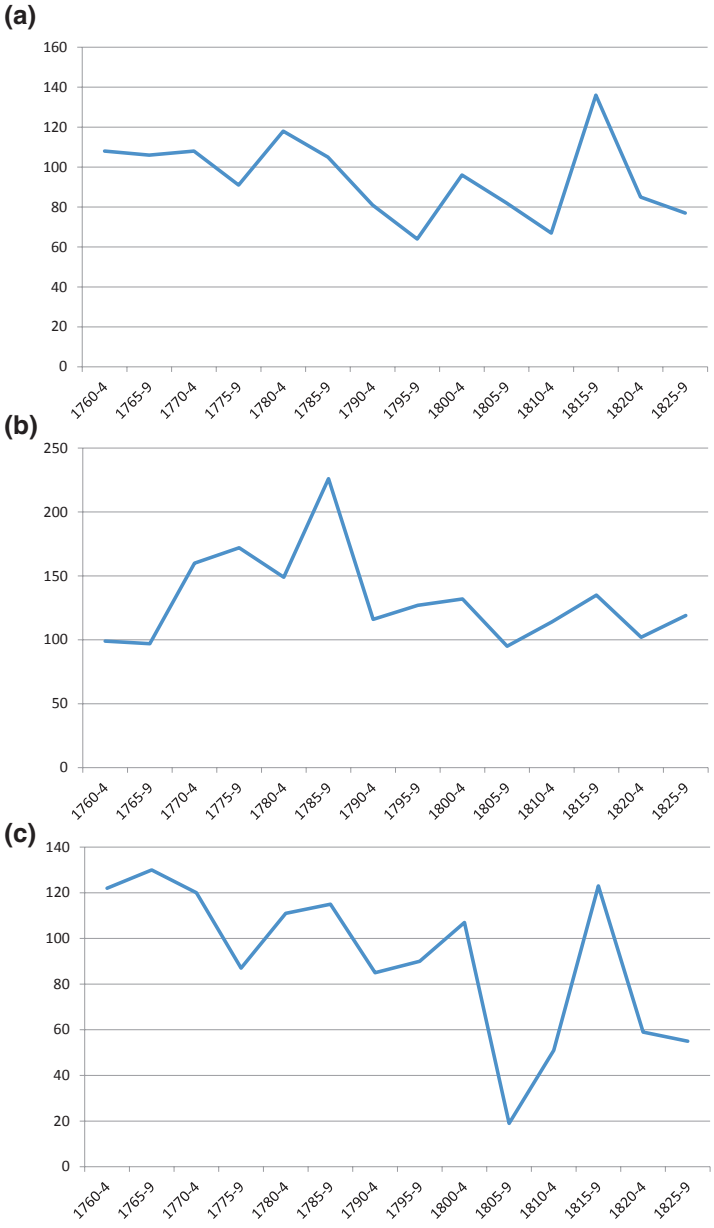
Indictments and Population

As we saw in Chapter 2, over the course of the eighteenth and early-nineteenth centuries, the number of persons indicted at English assizes increased rapidly, such increases often occurring at a faster rate than the corresponding growth in population. Unfortunately there are no corresponding figures for either the number of persons indicted at the Welsh Courts of Great Sessions over the same period, or detailed population estimates for the Welsh counties in the eighteenth century. The NLW

Crime and Punishment gaol file database lists 12,790 persons for the period 1760–1830: however, the date given for each entry is not of the trial, but rather when the alleged crime took place. According to Sharon Howard, some 1965 persons were indicted at the Denbighshire Courts of Great Sessions between 1661 and 1730. David W. Howell provides a figure of 1603 offences known to Courts of Great Sessions in eight Welsh counties between 1730 and 1800, but this figure is only based on a sample in five-year intervals over the period rather than the total number of indictments.[13] My own work on the Home Office Criminal Registers revealed that 3089 persons were indicted across Wales between 1805 and 1830 (including 632 persons tried at the Monmouthshire assizes).[14] Clearly, more detailed statistical work is required on the Great Sessions material.

Figure 4.1a–c show the number of persons indicted on the Brecon Circuit between 1760 and 1830. Between 1760 and 1830 the number of persons indicted on the Brecon Circuit declined by a quarter, from on average 66 persons per annum in the 1760s to on average of 50 persons per annum in the 1820s. However, this decline was not found across all three counties. Rather, while the two counties with the smallest populations, Breconshire and Radnorshire, experienced declines in the number of persons indicted over the period of 24 and 55% respectively, the more populous county of Glamorganshire experienced a 13% increase. This broad decline in the number of persons indicted is curious when considered both in terms of the English experience noted above as well as situation in the Wales Courts of Great Sessions generally. Although the evidence is limited, it would appear that the number of persons indicted across Wales grew over the period. For example, the number of persons indicted in the eight counties sampled by Howell increased by over 40%, from 92 in 1730 to 131 in 1800. Similarly, the number of persons indicted across Wales increased by 70% between 1805 and 1830, the largest growth occurring, as in England, after the end of the Napoleonic War.[15]

In the absence of detailed county population estimates for eighteenth century Wales akin to those produced by the Cambridge Group for the English counties, it is impossible to say how the patterns outlined above correspond with changes in the population sizes of the three


(a)
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1790-4
1795-9
1800-4
1805-9
1810-4
1815-9
1820-4
1825-9
(b)
250
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1765-9
1770-4
1775-9
1780-4
1785-9
1790-4
1795-9
1800-4
1805-9
1810-4
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1820-4
1825-9
(c)
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1820-4
1825-9

◀ **Fig. 4.1** **a** The number of persons indicted at the Breconshire Courts of Great Sessions, 1760–1830 ($n = 1324$). **b** The number of persons indicted at the Glamorganshire Courts of Great Sessions, 1760–1830 ($n = 1843$). **c** The number of persons indicted at the Radnorshire Courts of Great Sessions, 1760–1830 ($n = 1274$)

counties over the period.[16] However, as can be seen in Table 4.1, the mean annual number of persons indicted across the Brecon circuit fell by almost a third from 40 per 100,000 head of population (1800–1809) to 28 per 100,000 (1820–1829).

Although these mean annual indictment rates per head of population are generally higher than for those of the four English counties, the number of persons indicted annually on the Brecon Circuit was generally significantly smaller than the number indicted in the English assizes considered previously, particularly in the latter part of the period. Between 1760 and 1769, for example, the number of persons indicted in Breconshire, Glamorganshire and Radnorshire was 214, 196 and 252 respectively. The corresponding number in Cornwall, Kent, Lancashire and Oxfordshire were 248, 754, 296 and 207 persons respectively. Similarly, between 1820 and 1829, 162, 221 and 114 persons were indicted in Breconshire, Glamorganshire and Radnorshire respectively. The corresponding numbers for Cornwall, Kent, Lancashire and Oxfordshire were 353, 2749, 1432 and 641 persons respectively. Put another way, over five times as many persons were indicted in Kent between 1820 and 1829 than on the entire Brecon Circuit over the same period.

These differences in judicial workload were noted by contemporaries and, indeed, one key reason why the Courts of Great Sessions were abolished in 1830 was because it was felt that the Welsh justices were significantly underworked compared to their peers in England, whose duties included regular sittings at the Old Bailey alongside their biannual assize circuits.[17] In his evidence to the Select Committee on the administration of justice in Wales in 1817, for example, the Welsh justice Hugh Leycester related that the average number of prisoners that he tried was "Very few; sometimes two, three, four or five; and it has happened to me to go to two circuits, and not at some of the places have one prisoner".[18] Similarly, in his evidence to the Committee, the then justice of Chester, William Garrow, claimed that two days, rather than the allotted six, was sufficient to complete the criminal and civil business of each Session, even in the comparatively busy court in Chester.[19] Just over a decade

Table 4.1 The population of Breconshire, Glamorganshire and Radnorshire in 1801, 1811 and 1821, with the mean annual number of indictments per 100,000 population at the Brecon Courts of Great Sessions in the corresponding decades

County	*Population 1801*	*Mean annual number of indictments per 100,000 1800–1809*	*Population 1811*	*Mean annual number of indictments per 100,000 1810–1819*	*Population 1821*	*Mean annual number of indictments per 100,000 1820–1829*
Breconshire	34,791		38,784		44,640	
Glamorganshire	74,189		88,296		106,850	
Radnorshire	23,533		25,108		28,065	
Total	132,513	40	152,188	41	179,555	28

later, in his *Letter to the Right Hon. John, Baron Lyndhurst, Lord High Chancellor of England, on the administration of justice in Wales*, the 1st Earl of Cawdor estimated that each of the eight Welsh Justices adjudged on average 16 civil actions and around thirteen prisoners per annum, for which they were remunerated £9200. In contrast, he claimed that it cost the country the same amount to try 119 common-law causes and 100 prisoners. Even accounting for the extra work undertaken by the Welsh justices during the six days allotted to each session, he concluded, "I cannot think that the public have a very good bargain".[20]

Indictments, War and Dearth

Turning next to the impact of socio-economic pressures on the pattern of indictments, Fig. 4.2 shows the mean annual number of persons indicted for property offences in years of peace and war respectively.

Just under 60% of those indicted for property offences were indicted during years of peace (58% or 1236 persons); a slightly smaller percentage than in the four English counties (62%).[21] This pattern was seen across the three Welsh counties: Breconshire (379 persons/56%); Glamorganshire (614 persons/58%); and Radnorshire

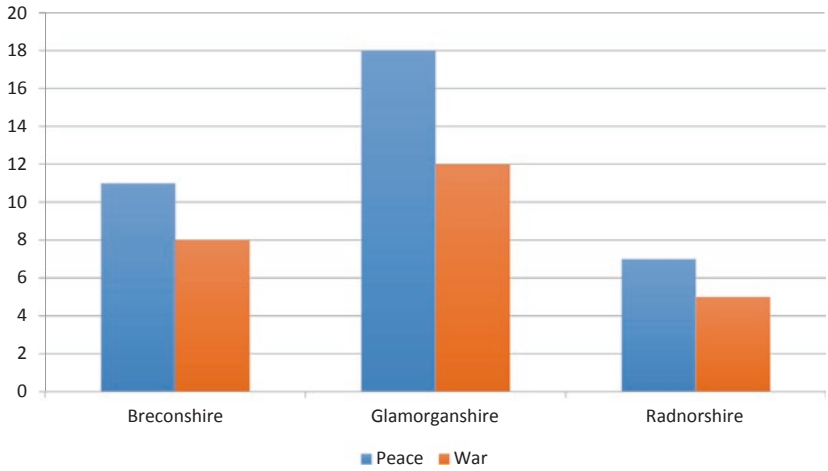


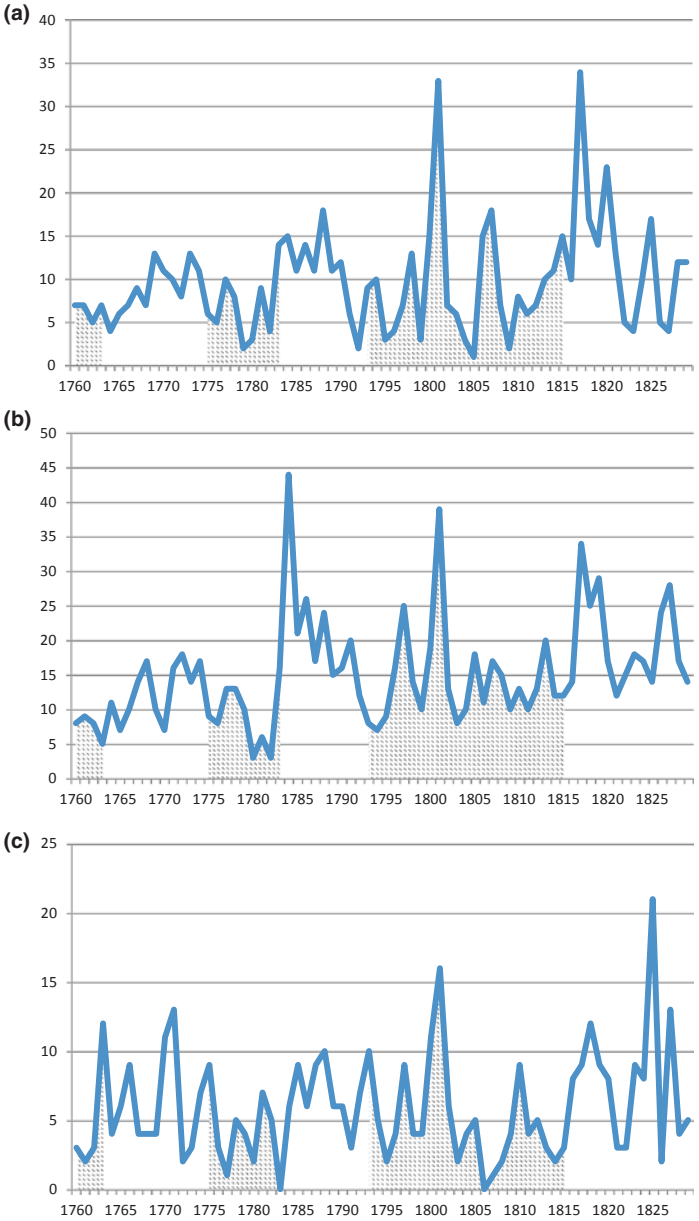
Fig. 4.2 The mean annual number of indictments for property offences during years of peace and war at the Brecon Courts of Great Sessions, 1760–1830

(243 persons/59%). However, in contrast to the situation in the English counties, differences in the mean annual number of property offenders indicted during peace and war would have been barely been recognisable to contemporaries. In Breconshire, just three more property offenders on average were indicted during peacetime, in Radnorshire the difference was two, while in Glamorganshire the difference was six. It would thus appear that in the Welsh counties periods of peace and war had less of an effect on the number of persons indicted for property offences than was the case in England. This is shown in more detail in Fig. 4.3a–c.

As was the case in the four English counties, the peak years for the numbers of persons indicted for property offences were during periods of peace (Breconshire: 1817; Glamorganshire: 1784; and Radnorshire: 1825). The periods with the highest annual number of indictments for property offences across all three counties were also during peacetime. Between 1816 and 1829, 13 and 20 persons were indicted on average for property offences per year in the Breconshire and Radnorshire Courts of Great Sessions, while 22 persons on average were similarly indicted in Glamorganshire in the decade of peace between the end of the American War of Independence in 1783 and the commencement of hostilities with France. That said, in all three counties the second highest peak in the number of indictments for property offences occurred during a wartime year (1801). There was also little real difference between the numbers of property offenders indicted in the peacetime and wartime peak years (Breconshire 33/34; Glamorganshire 44/39; and Radnorshire 21/16).

The significant peaks in the number of indictments in 1801 and in the period following the end of the Napoleonic war point to the influence of dearth and hardship on patterns of property offences (at least as measured by indictments). Although the daily wage of an agricultural worker in Wales increased over the period—from 6d to 8d in the 1740s to between 1s 4d and 2s in 1814—by the 1790s wages were failing to keep pace with the price of foodstuffs. Between 1794 and 1800, a series of poor harvests led to the price of wheat, barley and oats more than

Fig. 4.3 **a** The number of persons indicted for property offences at the Breconshire Court of Great Sessions, 1760–1830 (years of war highlighted). **b** The number of persons indicted for property offences at the Glamorganshire Court of Great Sessions, 1760–1830 (years of war highlighted). **c** The number of persons indicted for property offences at the Radnorshire Court of Great Sessions, 1760–1830 (years of war highlighted) ▶


(a)
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(c)
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doubling, and in some cases tripling, across Wales, leaving many families struggling to feed themselves. Between September 1794 and March 1801, the price of a bushel of wheat in the three counties that comprised the Brecon Circuit increased from under 7s to between 17s and 20s. Over the same period, the price of a bushel of barley similarly increased across the three counties from just under 4s to between 12s 5d and 13s 1d.[22] Writing in late 1795, Sir Frederick Eden described how the parish officer in Presteigne, Radnorshire told him that in the previous summer,

> …during the very high price of corn, the earnings of labourers were so small here, that the Poor were literally starving; and that 2 people, who came to crave relief from him, were in such a state of unfeigned distress, that they actually fell down in his home, through hunger.[23]

Five years later, according to John Bird, Justice George Hardinge "made some few remarks on the scarcity of Corn etc." in his address to the spring 1800 Glamorganshire grand jury, adding that he "doubted not 'but that similar plans would be adopted here to what had been done in other places for the relief of the poor'".[24]

The combination of rising corn prices coupled with concerns that corn was being exported out of the principality or hoarded by some farmers in order to further increase prices led to a series of corn riots across Wales during the final decade of the eighteenth century. Indeed, as one historian has observed, the riots in Wales between 1793 and 1801 were "…remarkable only because they were so numerous".[25] In February 1793, marchers from Llangyfelach raided farmhouses on their way to Swansea, where they threatened one maltster with the destruction of his house unless he agreed to sell his corn at the local market the following week. Two years later, crowds in Caernarvonshire stopped ships loaded with corn leaving the county, while at Aberystwyth, storehouses were broken into and the grain stolen. In the same year, mobs in Flintshire and Denbighshire also broke into warehouses, in the latter case also imprisoning three justices of the peace. The years 1800 and 1801 also saw corn riots erupt in a number of Welsh counties, such as Breconshire, Glamorganshire, Monmouthshire, Caernarvonshire and Carmarthenshire. In 1801 in Monmouthshire, crowds ransacked a ship carrying grain, as well as seizing grain from farmers and selling it at below market prices, while in Glamorganshire, the militia was called in and the Riot Act read to quell a disturbance.

Poor harvests continued in the post-war period, most notably in 1816—described by contemporaries as "the year without a summer". Soldiers returning home from the conflict faced both a lack of work and famine conditions. As one Cardiganshire man related in a letter in the summer of 1818:

> The imagination cannot conceive the prevalent distress – none but those who witness it can conceive its extent and intensity…The overseers testify to their total ability to keep the poor alive…The poor are attempting to prolong life by swallowing barley meal and water – boiling nettles etc. – and scores are in agonies of famine have declared to me this last week that they have not made a meal for two days together…I declare to God from what I see and hear, that I fear half the labouring population will perish as things are, before next harvest in this neighbourhood – nor did I ever conceive before that human nature could bear up amidst such Privations as these poor have endured and are suffering.[26]

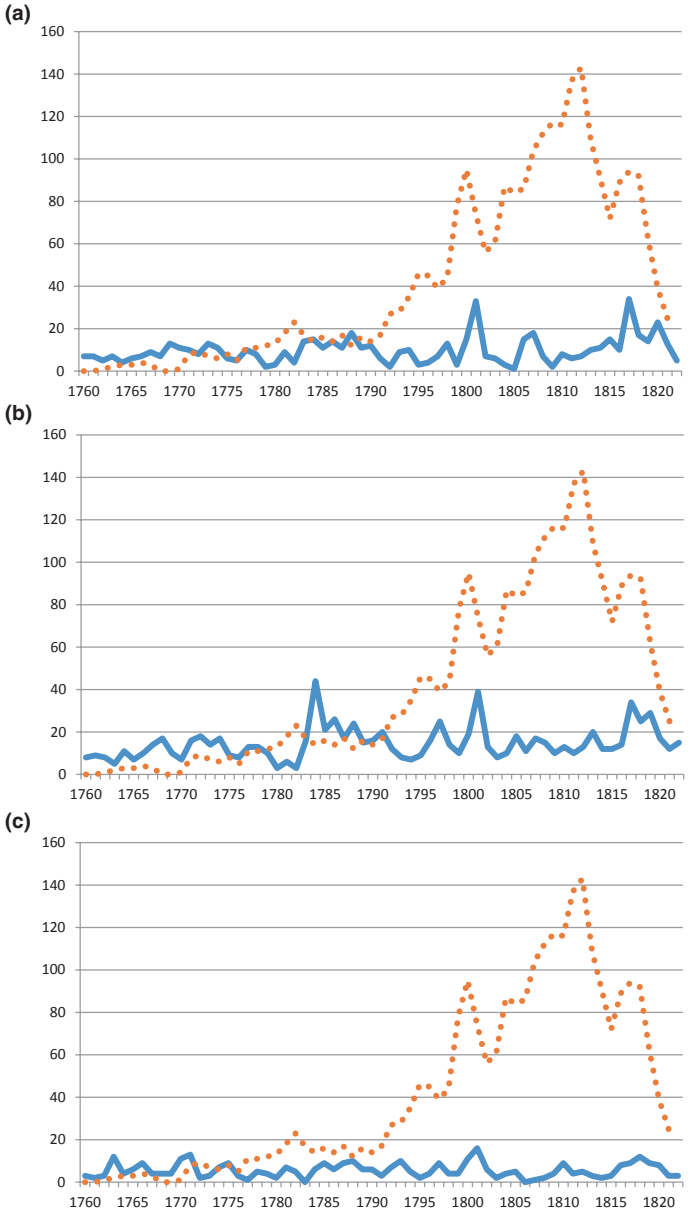
From the 1790s until the end of the period, there were also numerous protests against enclosure, as well as unrest in the newly industrialized regions of south Wales. Between 1793 and 1815, some eighty-five acts legislated for the enclosure of more than 213,000 acres of land in Wales and Monmouthshire, including 40,000 acres of the Fforest Fawr in Breconshire. As in England, there were numerous enclosure riots across Wales during the period, most notably in Caernarvonshire, Carmarthenshire, Flintshire, Pembrokeshire and Cardiganshire. Walls and fences enclosing land were torn down and bailiffs who came to remove those squatting on the land were threatened with violence, if not actually attacked.[27]

To date no attempt has been made to explore the relationship between the number of indictments for property offences in Wales and the cost of living during this period. David J. V. Jones claimed that there was no correlation between prices or wages and indictments in the early-nineteenth century, although he acknowledged that "in the years immediately after the Napoleonic Wars, a fall in living standards *was* accompanied by a rise in recorded crime".[28] In contrast, while he dismissed crime statistics as "dubious", Melvin Humphreys nevertheless noted that prosecutions in Montgomeryshire were concentrated around periods of economic hardship. Neither historian, however, conducted any statistical analysis of the available data to support their claims.

In his work on the Great Sessions records from 1730 to 1830, Nicholas Woodward found positive correlations between the number of indictments for burglary, sheep stealing and horse theft and grain prices and the price of consumer goods. The number of indictments for horse theft and burglary were also higher in years of peace.[29]

Figure 4.4a–c show the number of persons indicted for property offences at the Brecon Courts of Great Sessions between 1760 and 1822 compared with the price of consumer goods (based on the Schumpter-Gilboy Index). A Pearson R indicated what can clearly be seen in the above figures; that there was no relationship between the price of consumer goods and the number of persons indicted for property offences in any of the three Welsh counties. There were peaks in indictments in several years of high prices—specifically 1798–1802 and 1815–1818—but, as was the case with Cornwall and Oxfordshire, there was no relationship between both variables over time. Several reasons may be speculated upon for why this was the case. Primarily, as discussed in Chapter 2 in regard to Oxfordshire and Cornwall, it may have been the case that the rural population of Wales was less dependent on the market for their food than urban workers. As David Howell has pointed out many Welsh farm workers were paid in produce by their employers, and so would not have necessarily had to rely on the market for subsistence.[30] Similarly, Howard explains the absence of a correlation between the number of indictments for property offences and periods of economic distress in early modern Denbighshire, by suggesting that inhabitants of that county may have been "…subject to fewer of the social and economic pressures (and opportunities) that could motivate decisions to both steal and prosecute theft".[31] It may also be possible that the Schumpeter-Gilboy Index is not an accurate representation of prices of consumer goods in Wales, being, as it is, based on prices in southern England.[32] That said, as noted previously, the Index has been utilized with some success by Nicholas Woodward in his work on burglary

Fig. 4.4 **a** The number of persons indicted for property offences at the Breconshire Court of Great Sessions in comparison with consumer prices, 1760–1822. **b** The number of persons indicted for property offences at the Glamorganshire Court of Great Sessions in comparison with consumer prices, 1760–1822. **c** The number of persons indicted for property offences at the Radnorshire Court of Great Sessions in comparison with consumer prices, 1760–1822 ►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at the Great Sessions,[33] and, what Melvin Humphreys claims in relation to Montgomeryshire, is equally applicable to south Wales: "as Wales was locked into the English economy and serviced by English markets, it is reasonable to assume that English price series would broadly reflect trends in mid-Wales".[34]

The Criminal Justice Process: From Indictment to Sentencing

Table 4.2 shows the crimes for which persons were indicted on the Brecon Circuit between 1760 and 1830. Just under half of those indicted on the Brecon circuit were accused of property offences, the majority of these, as was the case in England, being accused of larceny. However, property offences constituted a much smaller proportion of indictments on the Brecon Circuit than in England, where they constituted 80% of all indictments over the period. Rather, a larger proportion of persons were indicted for crimes against the person on the Brecon Circuit than in the English counties (26% compared with 14%). This pattern would not appear to be unique to these three Welsh counties; according to Humphreys, 53% of those indicted in Montgomeryshire between 1690 and 1790 were accused of assault and other forms of violence compared with just 28.5% accused of property offences. Similarly, the number of indictments for simple assault and homicide combined at the Denbighshire Court of Great Sessions between 1661 and 1730 was only 3% less than for property felonies (248 compared with 279, or 27%/30% of indictments).[35] As David Howell has wryly observed,

> A reading of the eighteenth-century gaol files of the Great Sessions leaves the strong impression that this was a rough, brutal and unsqueamish society, in which men and women alike turned naturally to assaulting those who in any way offended them. For many, life was held cheaply.[36]

In particular, significantly more persons were indicted for non-fatal forms of violent assault on the Brecon Circuit than in the English counties (21% compared with 2%), although a higher percentage of persons were indicted for murder in the English counties (4% compared with 2%). Four times the percentage of persons were also indicted for manslaughter in the English counties than on the Brecon Circuit.

Table 4.2 The number and percentage of persons indicted for each crime type at the Brecon Courts of Great Sessions, 1760–1830

Crime type	*County*			*Total*	
	Breconshire	*Glamorganshire*	*Radnorshire*		
Larceny	313 (25%)	557 (31%)	175 (14%)	1045 (24%)	2137 (48%)
Sheep stealing	164 (12%)	98 (5%)	103 (8)	365 (8%)	
Horse stealing	49 (4%)	65 (3.5%)	43 (3%)	157 (4%)	
Burglary	36 (2%)	87 (4%)	21 (1%)	144 (3%)	
Fraud and forgery	23 (2%)	53 (3%)	17 (1%)	93 (2%)	
Housebreaking	32 (2%)	26 (1%)	11 (1%)	69 (2%)	
Cattle stealing	24 (2%)	23 (1%)	13 (1%)	60 (1%)	
Larceny in dwelling house	2 (0%)	37 (2%)	6 (0.5%)	45 (1%)	
Monetary offences	15 (1%)	27 (1.5%)	2 (0%)	44 (1%)	
Larceny from the person	10 (1%)	20 (1%)	9 (1%)	39 (1%)	
Highway robbery	1 (0%)	28 (1.5%)	6 (0.5%)	35 (<1%)	
Receiving	6 (0.5%)	23 (1%)	6 (0.5%)	35 (<1%)	
Robbery	2 (0%)	3 (0%)	0 (0%)	5 (<1%)	
Game offences	0 (0%)	1 (0%)	0 (0%)	1 (<1%)	
Stabbing, cutting, wounding and assault	294 (22%)	228 (12%)	400 (31%)	922 (21%)	1153 (26%)
Murder	25 (2%)	48 (2%)	25 (2%)	98 (2%)	
Manslaughter	22 (2%)	9 (1%)	6 (1%)	37 (1%)	
Infanticide	5 (0%)	23 (1%)	7 (0.5%)	35 (1%)	
Other sexual crimes	6 (0.5%)	15 (1%)	9 (1%)	30 (1%)	
Shooting at	6 (0.5%)	11 (1%)	3 (0%)	20 (1%)	
Rape	3 (0%)	7 (0%)	1 (0%)	11 (0%)	
Riot and public order	242 (18%)	354 (19%)	360 (28%)	956 (22%)	1147 (26%)
Other	35 (3%)	84 (5%)	49 (4%)	168 (4%)	
Arson	6 (0.5%)	5 (0%)	1 (0%)	12 (<1%)	
Felony	1 (0%)	5 (0%)	1 (0%)	7 (<1%)	
Concealing	2 (0%)	2 (0%)	0 (0%)	4 (<1%)	
Total	1324 (100%)	1839 (100%)	1274 (100%)	4437[a] (100%)	

[a]In four cases there is no crime shown in the sources

However, the most significant difference in the pattern of indictments between the English and Welsh counties concerns the percentage of persons indicted for riot or public order offences.[37] Whereas only 1% of those indicted in the English counties were accused of riot or a public order offence, just over one in five of those indicted on the Brecon circuit were thus accused. In contrast to the English assizes, then, the Wales Courts of Great Sessions were largely concerned with dealing with violence and public disorder, rather than the loss of property. While this may point to high levels of social disorder in Welsh communities during this period,[38] Humphreys cautions against such a conclusion, arguing that it may "…say more about the anxieties of the prosecutors than they do about the nature of violence in this community".[39] For example, in many cases, accusations of assault were brought to court by officials seeking the court's support, or were part of ongoing feuds between families. This was particularly the case among propertied families, for whom, Humphreys claims, "…the use of the law courts in this way was a confirmed habit".[40] In other cases, victims of simple assault used claims of "riot" to add weight to their allegations against their alleged attackers.

Welsh juries had a reputation among their contemporaries—a reputation that has only grown in the subsequent historiography of the Great Sessions—for their high acquittal rates. Welsh juries regularly mitigated the severity of the Bloody Code in practice either by, in the case of grand juries, returning indictments as ignoramus or, in the case of petty juries, finding defendants either not guilty or guilty on a lesser, non-capital charge (see Table 4.3). Of the sample of indictments for capital property offences from the Montgomeryshire Great Sessions between 1740 and 1758 analysed by Humphreys, for example, only 39 of the 104 true bills returned by grand juries resulted in a guilty verdict (37.5%), the majority being partial verdicts (28 or 72%). Of the 25 guilty verdicts returned against a sample of indictments for capital property offences between 1760 and 1884, fifteen were partial verdicts (60%). As Humphreys concludes:

> Wherever a jury could feel compassion for the offender, wherever there was felt to be a local case of need, wherever the stolen goods were anything other than a horse, or wherever the offender was not a persistent and notorious lawbreaker, it was highly probable that a Montgomeryshire jury would pass a partial verdict.[41]

Table 4.3 The verdicts handed down at the Brecon Courts of Great Sessions, 1760–1830

County	*Verdict*					*Total*
	Ignoramus	*No prosecution*	*Not guilty*	*Guilty*	*Other*	
Breconshire	280 (30%)	106 (11%)	219 (23%)	330 (35%)	5 (0.5%)	940 (100%)
Glamorganshire	439 (32%)	44 (3%)	348 (25%)	526 (38%)	12 (1%)	1369 (100%)
Radnorshire	449 (50%)	89 (10%)	204 (22.5%)	161 (18%)	3 (0%)	906 (100%)
Total	1168 (36%)	239 (7%)	771 (24%)	1017 (32%)	20 (1%)	3215[a] (100%)

[a]1226 verdicts are not shown in the sources (Breconshire: 384; Glamorganshire: 474; and Radnorshire: 368)

One way in which a petty jury could spare a felon the likelihood of expiating for their crime on the gallows was by returning a partial verdict. As we saw in Chapter 1, only between 7 and 12% of guilty verdicts handed down across the four English counties were partial verdicts. In contrast, petty juries on the Brecon Circuit returned between 18% and just under a quarter of guilty verdicts as partial verdicts (see Table 4.4). As was the case in England, the largest percentage of partial verdicts were returned for those indicted for burglary, with, for example, half of those and around one in five convicted of the crime in Breconshire and Glamorganshire and Radnorshire respectively being found guilty of a lesser crime (typically larceny). Interestingly, those convicted of housebreaking in the English counties were on average twice as likely to receive a partial verdict than those convicted on the Brecon Circuit (26% compared with 13%). Those convicted of larceny from the person were also slightly more likely on average to receive a partial verdict in the English counties than in the three Welsh counties (13% compared with 11%).

Just over one in five of those indicted on the Brecon Circuit during this period never faced a trial jury, either because of an ignoramus bill or the alleged victim failing to prosecute, and, of those that did, 57% were successfully convicted. Put another way, less than a third of those indicted on the Brecon circuit over the period were successfully convicted (32%). This situation was particularly marked in Radnorshire, where three-fifths of those indicted never faced a trial jury (grand juries returning ignoramus verdicts in half of the cases that they considered), and only 18% of those indicted were successfully convicted (or 44% of those tried). In contrast, in Breconshire and Glamorganshire just under a third of indictments were rejected by grand juries respectively, and 60% of those tried were successfully convicted (or 35 and 38% of those indicted respectively). This state of affairs was in marked contrast with the situation in England where, as we saw in Chapter 1, grand juries only rejected on average one in ten indictments, only 3% of prosecutors failed to attend court, and where two-thirds of those tried were successfully convicted (or 56% of those indicted).

Several reasons have been offered by historians to explain why conviction rates at the Great Sessions were much lower than for those at English assizes. Primarily, as was undoubtedly the case in England as well, many victims may have preferred to reach a private settlement with the alleged offender rather than incurring the costs and inconvenience

Table 4.4 The number and percentage of guilty and partial verdicts handed down for various crime types at the Brecon Courts of Great Sessions, 1760–1830

Crime	*Breconshire*		*Glamorganshire*		*Radnorshire*		*Total*	
	Guilty	*Partial*	*Guilty*	*Partial*	*Guilty*	*Partial*	*Guilty*	*Partial*
Burglary	9 (50%)	9 (50%)	28 (64%)	16 (36%)	5 (56%)	4 (44%)	42 (59%)	29 (41%)
Larceny (to value, not private, etc.)	156 (78%)	44 (22%)	275 (82%)	61 (18%)	56 (79%)	15 (21%)	487 (80%)	120 (20%)
Housebreaking	15 (83%)	3 (17%)	16 (89%)	2 (11%)	3 (100%)	0	34 (87%)	5 (13%)
Larceny from the person	4 (80%)	1 (20%)	6 (86%)	1 (14%)	7 (100%)	0	17 (89%)	2 (11%)
Total	184 (77%)	57 (23%)	325 (80%)	79 (20%)	71 (82%)	16 (18%)	580 (79%)	156 (21%)

of pursuing formal legal sanctions. A stolen cow, sheep or other item may have been returned, or the perpetrator of an assault, sexual or otherwise, may have paid a sum of money to the victim in compensation. In this way, crime and criminality would be dealt with informally within the community, with recourse to legal sanctions being seen as the option of last resort when all other community means of mediation and restitution had failed. Such extra-legal negotiations between neighbours would save the victim the cost and inconvenience (or even possibly threats of violence) of pursuing the alleged offender through the courts, would ensure that some degree of justice in the eyes of the victim and community was achieved and, of equal importance, help to preserve the reputation of the community. As Richard Ireland has noted, formal legal proceedings represented not only an attempt to discover the innocence or guilt of a particular offender and then press legal sanctions on the guilty, but also what he terms "a moral audit of the countryside"—an audit conducted by those from outside the community via an externally imposed legal system (not to say through the medium of an alien language). In such a situation, a community may have felt that it was better to deal with its problems, and problematic neighbours, within the community and not to "wash their dirty linen in public".[42]

The same argument could be extended to explain the seeming reluctance of both grand juries to return True Bills and for petty juries to return guilty verdicts. As the leading figures in their communities, grand jurors may have believed that it would be better to return an ignoramus bill, possibly hoping that the closure of the legal route to redress would encourage victim and alleged offender to return to community mediation. Indeed, as community leaders, they may have felt even more sharply the desire to keep justice within the community itself, not least as it was they who received the praise or condemnation for the conduct of their populations, as manifested by the size of the calendar of prisoners, by the visiting Justice during their opening address.[43] Petty jurors may have returned not guilty verdicts for the same reason, and it is likely that many a person who left the court judged not guilty nevertheless received some type of community sanction if it was believed by their neighbours that they had committed an offence. In this way, as Ireland has observed, the Great Sessions operated at the collision point of two competing models of law enforcement: "an asocial legal model which looks to the establishment of guilt of an individual offence by an individual offender within a courtroom and a rather more contextualized view of the legal

system which finds expression in the contribution of lay participants in the legal process".[44]

One way in which the Great Sessions did not differ from English assizes, however, was in the differential conviction rates for persons indicted for property offences against persons indicted for crimes against the person (although this was not a statistically significant relationship). Persons indicted for property offences were significantly less likely to have the indictment dismissed by a grand jury and significantly more likely to be convicted (see Table 4.5). Prosecutors were also much more likely to prosecute a property offence than a crime against the person.

Turning finally to sentencing, Table 4.6 shows the sentences that were passed on convicted felons on the Brecon Circuit. Just over two-fifths of convicted felons were sentenced to a period of imprisonment, the majority being sentenced for twelve months or less (64% or 248 felons). In contrast, less than a fifth were sentenced to transportation and just under a third were sentenced to death. This was in marked contrast to the English counties, where more felons were sentenced to death than to a period of imprisonment (38 and 35% respectively). One possible

Table 4.5 The verdicts handed down at the Brecon Courts of Great Sessions for property offences and crimes against the person, 1760–1830

Crime type	*Verdict*					*Total*
	Ignoramus	*No prosecution*	*Not guilty*	*Guilty*	*Other*	
Property offences	390 (20%)	55 (3%)	602 (31%)	857 (45%)	13 (1%)	1917 (100%)
Crimes against the person	359 (55%)	101 (16%)	92 (14%)	90 (14%)	5 (1%)	647 (100%)

Table 4.6 The different verdicts handed down to males and females at the Brecon Courts of Great Sessions, 1760–1830

County	*Sentence*				*Total*
	Death	*Transportation*	*Prison/hard labour*	*Other*	
Breconshire	99 (33%)	52 (17%)	128 (42%)	24 (8%)	303 (100%)
Glamorganshire	133 (28%)	99 (21%)	196 (41%)	52 (11%)	480 (100%)
Radnorshire	49 (33%)	25 (17%)	61 (41%)	13 (9%)	148 (100%)
Total	281 (30%)	176 (19%)	385 (41%)	89 (10%)	931[a] (100%)

[a]86 sentences are not shown in the sources (Breconshire: 27; Glamorganshire: 46; and Radnorshire: 13)

explanation for this is that those convicted of larceny were slightly more likely to receive a sentence of imprisonment in Wales than in England (62 compared with 59%). For example, half and 82% of those convicted of fraud and forgery and monetary offences respectively were sentenced to a period of imprisonment compared with 32 and 30% respectively in England. In contrast, 35 and 14% of those convicted of these two crimes were sentenced to death in Wales compared with 57 and 35% respectively in England. Moreover, those convicted of larceny were more likely to receive a sentence of imprisonment in Wales in England rather than be sentenced to death: 62 and 1% were sentenced to imprisonment and death respectively in Wales compared with 53 and 3.5% in England. Both of these suggest that Welsh jurors were undervaluing stolen goods and, in the case of forgery and monetary offenders, returning partial verdicts to save them from the gallows.

Sex Crime and Justice in Georgian Wales

In comparison to the relatively large historiography on females in the criminal justice system in eighteenth- and nineteenth-century England, almost nothing has been published on the topic concerning females in Wales over the same period.[45] From what has been published, however, it is clear that, as was the case in England, females in Wales were less likely to be indicted at the Great Sessions and, if they were, it was typically for less serious, non-violent offences. Thus, of 3089 persons indicted across Wales between 1805 and 1830, only 639 (21%) were females; the majority of whom were accused of larceny (57%).[46] Females also constituted just under a fifth of those indicted at the Denbighshire Great Sessions between 1661 and 1730 (19.2%), as well as 19% of those indicted for property offences between 1730 and 1800 across the eight Welsh counties sampled by Howell.[47]

Only 16% of persons indicted on the Brecon Circuit were female (727 females); an average of ten females per year across the three counties. There was also little difference in the percentage of females indicted across the three counties—the percentages ranging from a low of 15% in Radnorshire to a high of 17.5% in Glamorganshire (see Fig. 4.5). While low, these percentages are still, nevertheless, slightly higher than those from England, where females constituted just 13% of those indicted across the four counties.

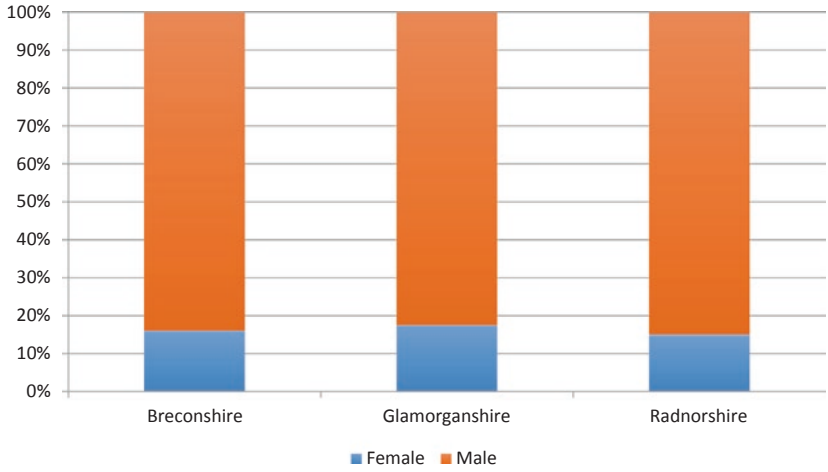

Fig. 4.5 The number of males and females indicted at the Brecon Courts of Great Sessions, 1760–1830

Again, the data from the Brecon Circuit provides further evidence against the "vanishing female" thesis. Between 1760 and 1830 the percentage of females indicted on the Brecon circuit declined by just 1%, from 14% in 1760–1764 to 13% in 1825–1829 (see Fig. 4.6). This decline was slightly smaller than the 3% decline seen in the four English counties (15–12%) and significantly smaller than the 24% decline in the percentage of females indicted at the Old Bailey over the same period. Again, as with the English counties, there were differences between the counties in terms of the change in the percentage of females indicted in each county over the period. While the percentage of females indicted declined in Breconshire (10–9%) and Glamorganshire (23–13%), the percentage indicted in Radnorshire actually increased (9–16%).

Previous research has revealed a mixed answer to the question of whether females were more or less likely to receive favourable treatment from grand and trial juries in Wales. Of the 277 males and 85 females indicted at the Denbighshire Great Sessions between 1661 and 1730 for theft, 29.5% of males compared to 27% of females had the bills against them dismissed by the grand jury. However, females were significantly

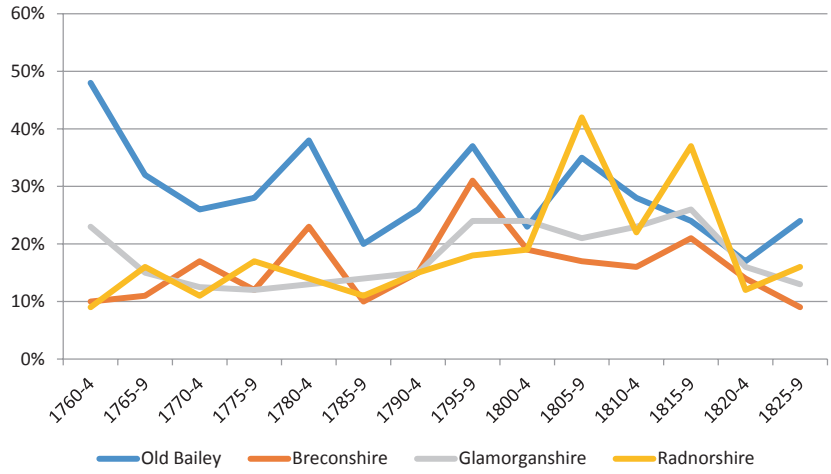

Fig. 4.6 The mean percentage of female offenders indicted at the Brecon Courts of Great Sessions, 1760–1830 compared with the Old Bailey

more likely to be acquitted by the trial jury (32% compared to 19.5% of males) and, if found guilty, to receive a partial verdict (16% compared to 12% of males). In contrast, in my own work on the Welsh Courts between 1805 and 1830, I found that females were more likely to have the bill against them dismissed before it could be considered by a trial jury (21% compared to 16% of males), and slightly less likely to be convicted if they stood trial (54% compared to 57.5% of males). Males were also more likely to turn King's evidence against their criminal compatriots and receive another form of punishment than females (1% compared to less than 0.5% of females).[48] Catherine Horler-Underwood has also revealed a complex picture of female trial outcomes for different offences at the Great Sessions between 1730 and 1830. Females indicted for murder were more likely to receive an ignoramus verdict and, if tried, to be acquitted, than males. Females were also more likely to have charges of forcible entry and detainer against them dismissed by grand juries.[49]

Table 4.7 shows the verdicts that were handed down to males and females on the Brecon Circuit. Males were more likely to both have the indictments against them dismissed before trial (45%/38%) and were also less likely to be convicted than females (30%/38%). However, a Pearson Chi Square test indicated that there was no significant

Table 4.7 The verdicts handed down to males and females at the Brecon Courts of Great Sessions, 1760–1830

County	*Sex*	*Verdict*					*Total*
		Ignoramus	*No prosecution*	*Not guilty*	*Guilty*	*Other*	
Breconshire	Male	251 (33%)	85 (11%)	176 (23%)	253 (33%)	5 (1%)	770 (100%)
	Female	29 (17%)	21 (12%)	43 (25%)	77 (45%)	0	170 (100%)
Glamorganshire	Male	350 (32%)	38 (3.5%)	281 (26%)	407 (37%)	12 (1%)	1088 (100%)
	Female	89 (32%)	6 (2%)	67 (24%)	119 (42%)	0	281 (100%)
Radnorshire	Male	375 (50%)	80 (11%)	170 (22.5%)	129 (17%)	3 (0.5%)	757 (100%)
	Female	74 (50%)	9 (6%)	34 (23%)	32 (21.5%)	0	149 (100%)
Total	Male	976 (37%)	203 (8%)	627 (24%)	789 (30%)	20 (1%)	2615 (100%)
	Female	192 (32%)	36 (6%)	144 (24%)	228 (38%)	0	600 (100%)

association between sex and either verdict in any of the three counties. These patterns are particularly noteworthy when compared with those in England, where, as we saw in Chapter 1, females were significantly more likely to be acquitted and slightly more likely to have not stood trial, either because of the decision of a grand jury or because an alleged victim did not attend court to prosecute. One possible explanation for this state of affairs is that a significantly larger percentage of females on the Brecon Circuit were indicted for property offences than males (62% compared to 47% of males). In contrast, the differences in the percentage of males and females indicted for property offences in the four English counties was invariably much smaller.[50] As property offences were more successfully prosecuted across both England and Wales, it may be that the nature of the crime rather than the sex of the criminal is the significant variable in explaining why females were more successfully prosecuted than males.

As was the case in England, males convicted in the Welsh Courts tended to receive harsher sentences than females (see Table 4.8). Between 1805 and 1830, for example, 36% of males received a capital conviction in the Welsh Courts, over double the percentage of females being similarly convicted (15%). Similarly, 19% of convicted males received a sentence of transportation, compared with 12% of females. Females, in contrast, were much more likely to receive a sentence of imprisonment than males (72% compared with 44% of females), typically for less than a year. Females convicted of property offences in Denbighshire between 1661 and 1730, were significantly more likely

Table 4.8 The sentences passed on males and females at the Brecon Courts of Great Sessions, 1760–1830

County	*Sex*	*Sentence*				*Total*
		Death	*Transportation*	*Prison/hard labour*	*Other*	
Breconshire	Male	90 (39%)	36 (16%)	84 (36%)	20 (9%)	230 (100%)
	Female	9 (12%)	16 (22%)	44 (60%)	4 (6%)	73 (100%)
Glamorganshire	Male	121 (33%)	84 (23%)	121 (33%)	42 (11%)	368 (100%)
	Female	12 (11%)	15 (13%)	75 (67%)	10 (9%)	112 (100%)
Radnorshire	Male	43 (36%)	23 (19%)	39 (33%)	13 (11%)	118 (100%)
	Female	6 (20%)	2 (6%)	22 (74%)	0	30 (100%)
Total	Male	251 (35%)	143 (20%)	244 (34%)	75 (11%)	716 (100%)
	Female	27 (13%)	33 (15%)	141 (66%)	14 (7%)	215 (100%)

to receive a sentence of whipping compared to males (39% compared with 17% of males) as well as an unconditional pardon (11% compared with 4% of males). Males, in contrast, were more likely to be sentenced to death (12% compared with no females) and to receive a pardon conditional on a period of transportation (15% compared with 6% of females).[51] Likewise, until the turn of the nineteenth century, females convicted of assault typically received a fine of less than 1s. Males, in contrast, could expect a fine along with a period of imprisonment. After 1805, however, females tended to be treated more harshly; typically receiving a prison sentence, whereas males were typically fined. Females were also more likely to have charges of forcible entry and detainer against them dismissed by grand juries, and, if convicted, receive a smaller fine than males. However, females convicted of currency or forgery could expect little mercy from the courts: between 1730 and 1830 a similar percentage of females and males went to the gallows after being convicted of these crimes.[52]

These patterns were echoed on the Brecon Circuit. Over double the percentage of males were sentenced to death compared with females and, as we will see in the next chapter, males were also significantly more likely to end their criminal careers on the gallows. Males were also more likely to receive a sentence of transportation, including, in thirteen cases, a sentence of transportation for life (a sentence from which females were spared on the Brecon circuit). Finally, almost double the percentage of females received a sentence of imprisonment compared to males, typically for less than a year (39% compared with 23% of males). These patterns were found across all three counties, the only difference being seen in Breconshire, where a slightly higher percentage of females than males were sentenced to transportation. Again, these sentences reflected more the types of crimes for which males were indicted compared to females, rather than any mercy on the part of the justices. As was the case in England, males tended to be indicted for the more serious forms of property offences that caused concern amongst contemporaries and, consequently, the harshest sentences, such as, for example, highway robbery (100%), burglary (91%), horse-stealing (93%) and housebreaking (86%).

Conclusion

In his *Land of White Gloves*, Richard Ireland warns against treating the Welsh experience as simply "…[the] English experience with a rather different accent". As we have seen in this chapter, although England and

Wales shared the same law and nominally the same legal system during this period, patterns of indictments, prosecution and sentencing were often different on both sides of the border.[53] The number of persons indicted on the Brecon Circuit broadly declined between 1760 and 1830, particularly in the more sparsely populated counties of Breconshire and Radnorshire. Whereas in the English counties, the number of persons indicted, particularly for property offences, were strongly associated with the increase in population size, war and the cost of living, these factors seemingly played little, if any, role on the Brecon Circuit. The number of persons indicted over the period declined while the population increased and there was little difference in the numbers of persons indicted for property offences in peace or wartime. While the numbers of indicted property offenders peaked in the period of high prices between 1798–1802 and 1815–1818, there was no significant association between the cost of living and the numbers thus indicted.

As in England, the majority of those indicted on the Brecon Circuit had been accused of a form of property offence, typically larceny. However, a larger percentage of persons were indicted for crimes against the person and public order offences on the Brecon Circuit than in English assizes. Those indicted on the Brecon Circuit were much more likely to never face a trial jury, and, if they did, stood a greater likelihood of being acquitted. If convicted, they were more likely than convicted felons in England to receive a sentence of imprisonment, seemingly because Welsh jurors were undervaluing stolen goods and returning partial verdicts in capital cases in a greater number of cases than English juries.

The pattern of indictment, prosecution and sentencing for females on the Brecon Circuit during this period was also similar in many ways, but also different in others, to those seen in the four English counties previously discussed. As in England, females were indicted in smaller numbers to males, although a slightly higher percentage of females were indicted at the Great Sessions than in the four English counties. However, females were slightly more likely to be successfully prosecuted on the Brecon Circuit than in the English counties, although, as in England, tended to receive lighter sentences than males. Put another way, although males were more likely to have the indictments dismissed against them by the grand jury and to be found innocent than females, if they were found guilty they were more likely to receive a harsher sentence.

Notes

1. 'Execution of William Griffith at Beaumaris', *Monmouth Merlin*, 25 September 1830, p. 3. The article had been reprinted with acknowledgements from the *North Wales Chronicle*.
2. Based on lists of executions at http://www.capitalpunishmentuk.org/.
3. At some later date, the Courts also gained a jurisdiction in equity, although there is still debate about how this state of affairs came to pass. Echoing the English assize circuits, Wales was divided into four circuits, visited by eight Justices: North Wales (Anglesey, Caernarvonshire, and Merionethshire), Chester (Flintshire, Denbighshire, Montgomeryshire, along with Chester), Carmarthen (Carmarthenshire, Cardiganshire, and Pembrokeshire) and Brecon (Breconshire, Glamorganshire, and Radnorshire). Monmouthshire was part of the Oxford assize circuit. Two justices served at each Session.
4. On the history of the Courts of Great Sessions, see especially W. Llewelyn Williams, *The making of modern Wales* (London, Macmillan & Co., 1919), Chapter IV; Glyn Parry, *A guide to the records of Great Sessions in Wales* (Aberystwyth, The National Library of Wales, 1995), pp. iv–xlix; Thomas Glyn Watkin, *The legal history of Wales* (Cardiff, University of Wales Press, 2007).
5. 'Crime and punishment—The National Library of Wales', https://www.llgc.org.uk/sesiwn_fawr/index_s.htm.
6. Katherine D. Watson, 'Women, violent crime and justice in Georgian Wales', *Continuity and Change*, vol. 28, no. 2 (2013), 245–72, p. 246. See also Richard W. Ireland, 'Why everything we know about criminal justice history is wrong', *Law, Crime & History*, vol. 5, no. 1 (2015), 130–42.
7. Richard W. Ireland, *Land of white gloves? A history of crime and punishment in Wales* (London, Routledge, 2015), p. 6. See also Catherine E. Horler-Underwood, 'Aspects of female criminality in Wales, c. 1730–1830: Evidence from the Court of Great Sessions' (PhD thesis, Cardiff University, 2014), Conclusion.
8. David J. V. Jones, 'Life and death in eighteenth-century Wales', *Welsh History Review*, vol. 10, no. 4 (1981), 536–48; John Minkes, 'Wales and the "Bloody Code": The Brecon circuit of the Court of Great Sessions in the 1750s', *Welsh History Review*, vol. 22, no. 4 (2005), 673–704; Nicholas Woodward, 'Infanticide in Wales, 1730–1830', *Welsh History Review*, vol. 23, no. 3 (2007), 94–125; 'Burglary in Wales, 1730–1830: Evidence from the Great Sessions', *Welsh History Review*, vol. 24, no. 2, 60–91; 'Seasonality and sheep stealing: Wales, 1730–1830', *Agricultural History Review*, vol. 56, no. 1 (2008), 25–47; 'Horse stealing in Wales,

1730–1830', *Agricultural History Review*, vol. 57, no. 1 (2009), 70–108; Sharon Howard, *Law and disorder in early modern Wales: Crime and authority in the Denbighshire Courts, c. 1660–1730* (Cardiff, University of Wales Press, 2008); Watson, 'Women, violent crime and justice in Georgian Wales', *Op. Cit.*, John Walliss, 'Wales and the "Bloody Code": The Courts of Great Sessions, 1805–30', *Welsh Historical Review*, vol. 27, no. 1 (2014), 28–52. See also, Melvin Humphreys, *The crisis in community: Montgomeryshire 1680–1815* (Cardiff, University of Wales Press, 1996), Chapter IX; David W. Howell, *The rural poor in eighteenth-century Wales* (Cardiff, University of Wales Press, 2000), Chapter 10.

9. Jones, 'Life and death in eighteenth-century Wales', *Op. Cit.*, pp. 538, 545.
10. Richard W. Ireland, 'Putting oneself on whose country? Carmarthenshire juries in the mid-nineteenth century', in Thomas Glyn Watkin (ed.), *Legal Wales: Its past, its future: Essays dedicated to Professor Dafydd Jenkins on his ninetieth birthday* (Cardiff, Welsh Legal History Society, 2001), pp. 63–87; Peter King and Richard Ward, 'Rethinking the Bloody Code in eighteenth century Britain: Capital punishment at the centre and on the periphery', *Past & Present*, 228 (2015), 159–205; Humpreys, *The crisis in community*, *Op. Cit.*; Ireland, *Land of white gloves? Op. Cit.*
11. Thomas Leach, *Modern reports, or select cases adjudged in the courts of King's Bench, chancery, common pleas and exchequer, volume the eighth* (Dublin, G. G. & J. Robinson, R. Brooke, J. Butterworth, Ogilvy & Speare, and J. White, 1795), p. 137.
12. Quoted in Ireland, 'Putting oneself on whose country?', *Op. Cit.*, pp. 70–71.
13. Sharon Howard, *Law and disorder in early modern Wales*, *Op. Cit.*; Howell, *The rural poor*, *Op. Cit.*, Table 7. The counties sampled are: Breconshire, Cardiganshire, Denbighshire, Flintshire, Glamorganshire, Montgomeryshire, Pembrokeshire, and Radnorshire.
14. Walliss, 'Wales and the "Bloody Code"', *Op. Cit.*, Figure 6.
15. Howell, *The rural poor*, *Op. Cit.*, Table 7; Walliss, 'Wales and the "Bloody Code"', *Op. Cit.*, Figure 1.
16. Some work has been undertaken to estimate the population sizes of Welsh counties at various points between the sixteenth century and the beginning of the nineteenth century, however there is, at the time of writing, no estimates for any of the three counties in 1761. It is possible to estimate a population for Glamorganshire of 63,039 in 1760 based on a formula developed by Moelwyn I. Williams, but this formula cannot be applied to Radnorshire or Breconshire: see Moelwyn I. Williams, 'Agriculture and society in Glamorgan, 1660–1760' (PhD thesis, University of Leicester, 1967), Chapter 1. On estimates of the Welsh

population prior to the nineteenth century, see David Williams, 'A note on the population of Wales, 1536–1801', *The Bulletin for the Board of Celtic Studies*, vol. 8 (1935), 359–63; W. T. R. Pryce, 'Parish registers and visitation returns as primary sources for the population geography of the eighteenth century', *Transactions of the Honourable Society of Cymmrodorion*, Session 1971, part 2 (1971), 271–93.

17. Williams, *The making of modern Wales*, *Op. Cit.*; Mark Ellis Jones, '"An invidious attempt to accelerate the extinction of our language": The abolition of the Court of Great Sessions and the Welsh language', *Welsh History Review*, vol. 19, no. 2 (1998), 226–64; Margaret Escott, 'How Wales lost its judicature: The making of the 1830 Act for the abolition of the Courts of Great Sessions', *The Transactions of the Honourable Society of Cymmrodorion*, vol. 13 (2007), 134–59.
18. Select Committee on laws relating to the administration of justice in Wales, *Report from the Select Committee on the administration of justice in Wales with an appendix*, 1817, V. 307, p. 16. According to John Bird, the clerk to the first Marquess of Bute, there was so little work at the spring 1799 session at the Glamorganshire, that "Judge Hardinge left his Brother [Judge] Moysey to complete the business of this day, and the Court in the Judges Chambers tomorrow morning, and went with Mr. Sheriff Goodrich to Energlyn to dinner, and from thence to Brecon"—John Bird, 'The diaries of John Bird, 1790–1803', *Publications of the South Wales Record Society*, no. 4 (1987), 50–141, p. 112.
19. Select Committee on laws relating to administration of justice in Wales, 'Report from the Select Committee', *Op Cit.*, pp. 104–7.
20. John Frederick and Earl Cawdor, *Letter to the Right Hon. John, Baron Lyndhurst, Lord High Chancellor of England, on the administration of justice in Wales* (Edinburgh, Constable & Co., 1828), p. 21. According to A. A. Powell, on average only 8.5 persons were tried in each Session held in Breconshire between 1735 and 1830: A. A. Powell, 'Crime in Brecknockshire 1733–1830 as revealed by the records of the Court of Great Sessions' (MA thesis, University of Wales, 1990).
21. C. F. Minkes, 'Wales and the "Bloody Code"', *Op. Cit.*, Tables 7 and 8.
22. David J. V. Jones, *Before Rebecca: Popular protests in Wales 1793–1835* (London, Allen Lane, 1973), Table 2. See also David Thomas, *Agriculture in Wales during the Napoleonic wars: A study in the geographical interpretation of historical sources* (Cardiff, University of Wales Press, 1963).
23. Quoted in Howell, *The rural poor in eighteenth-century Wales*, *Op. Cit.*, p. 93. Further evidence of the parlous situation of the population of Radnorshire during this period is provided by the analysis of parish birth and burial records by O. S. Ashton. According to Ashton, the number

of burials in several Radnorshire hundreds more than doubled between 1760 and 1800: see O. S. Ashton, 'Eighteenth century Radnorshire', *Radnor Society Transactions*, vol. 40 (1970), 40–55.

24. Bird, 'The diaries of John Bird', *Op. Cit.*, p. 118.
25. Jones, *Before Rebecca*, *Op. Cit.*, p. 13.
26. Letter from David Williams, 7 June 1818, quoted in Russell Davies, *Hope and heartbreak: A social history of Wales and the Welsh, 1776–1871* (Cardiff, University of Wales Press, 2005), p. 166.
27. Jones, *Before Rebecca*, *Op. Cit.*
28. David J. V. Jones, *Crime in nineteenth-century Wales* (Cardiff, University of Wales Press, 1992), p. 56. Similarly, Sharon Howard has noted that peaks in indictments for property offences in early modern Denbighshire did not always coincide with periods of economic crisis: Howard, *Law and disorder in early modern Wales*, *Op. Cit.*
29. Woodward, 'Burglary in Wales', *Op. Cit.*, Table 7; 'Seasonality and sheep stealing', *Op. Cit.*, Table 5; 'Horse stealing in Wales', *Op. Cit.*, Table 10.
30. Howell, *The rural poor in eighteenth century Wales*, *Op. Cit.*
31. Howard, *Law and disorder in early modern Wales*, *Op. Cit.*, p. 102.
32. See Elizabeth W. Gilboy, 'The cost of living and real wages in eighteenth century England', *The Review of Economics and Statistics*, vol. 18, no. 3 (1936), 134–43, p. 136.
33. Woodward, 'Burglary in Wales, 1730–1830', *Op. Cit.*
34. Humphreys, *The crisis of community*, *Op. Cit.*, p. 63
35. Humphreys, *The crisis of community*, *Op. Cit.*; Howard, *Law and disorder in early modern Wales*, *Op. Cit.*, Table 1.1.
36. Howell, *The rural poor in eighteenth-century Wales*, *Op. Cit.*, p. 213.
37. For discussions of riots and in Welsh communities and official responses to them during this period, see Sharon Howard, 'Riotous community: Crowds, politics and society in Wales, c. 1700–1840', *Welsh History Review*, vol. 20, no. 4 (2001), 656–86; Horler-Underwood, 'Aspects of female criminality in Wales', *Op. Cit.*, Chapters 5 and 6; David J. V. Jones, 'Law enforcement and popular disturbances in Wales, 1793–1835', *The Journal of Modern History*, vol. 42, no. 4 (1970), 496–523.
38. See for example, Lawrence Stone, 'Kinship and forced marriage in early eighteenth-century Wales', *Welsh History Review*, vol. 17, no. 3 (1995), 256–64; Davies, *Hope and heartbreak*, *Op. Cit.*
39. Humphreys, *The crisis of community*, *Op. Cit.*, p. 226.
40. Humphreys, *The crisis of community*, *Op. Cit.*, p. 226.
41. Humphreys, *The crisis of community*, *Op. Cit.*, p. 245.
42. Humphreys, *The crisis of community*, *Op. Cit.*, Ireland, 'Putting oneself on whose country?', *Op. Cit.* Such an attitude was also found in rural communities in England even in the case of the most serious offences—for a

discussion see Peter King, 'The impact of urbanization on murder rates and on the geography of homicide in England and Wales, 1780–1850', *The Historical Journal*, vol. 53, no. 3 (2010), 671–98.

43. For examples of the alternating praise and chastisement that grand juries on the Brecon Circuit received from Justice George Hardinge, see George Hardinge, *The miscellaneous works in prose and verse of George Hardinge, Esq., vol. 1* (London, J. Nichols, Son, and Bentley, 1818), pp. 1–190. On 22 August 1803, for example, he concluded his charge to a Glamorganshire grand jury by asking them:

    > Where, Gentlemen, is my Calendar? It is not in my hand; it is a perfect blank; there is not one prisoner for trial. It is another and signal proof (in which *your* merit is a most brilliant part of the evidence) that our Constitution, which is the envy of the World, has the charm (for I can give it no other name) of reconciling political independence with *legal morality*, and the discipline of exemplary obedience to legitimate Government with high spirit, no less exemplary, when the National voice of honour calls it forth (ibid., p. 35).

44. Ireland, 'Putting oneself on whose country?', *Op. Cit.*, p. 66. Similarly, Humphreys argues that "…the justice of the English law courts coexisted uneasily with the justice of the Welsh community…" (Humphreys, *The crisis of community*, *Op. Cit.*, p. 217).
45. See Watson, 'Women, violent crime and criminal justice in Georgian Wales', *Op. Cit.*; Horler-Underwood, 'Aspects of female criminality in Wales', *Op. Cit.*
46. Walliss, 'Wales and the "Bloody Code"', *Op. Cit.*, Figure 2.
47. Howard, *Law and disorder in early modern Wales*, *Op. Cit.*; Howell, *The rural poor in eighteenth-century Wales*, *Op. Cit.*, Table 10.
48. Howard, *Law and disorder in early modern Wales*, *Op. Cit.*, Table 3.5; Walliss, 'Wales and the "Bloody Code"', *Op. Cit.*
49. Horler Underwood, 'Aspects of female criminality in Wales', *Op. Cit.*
50. The male/female percentages of indictments for property offences in the English counties were: Cornwall (71%/66%); Kent (87%/91%); Lancashire (68%/73%); Oxfordshire (90%/82%).
51. Walliss, 'Wales and the "Bloody Code"', *Op. Cit.*, Figure 4; Howard, *Law and disorder in early modern Wales*, *Op. Cit.*, Table 3.6.
52. Horler Underwood, 'Aspects of female criminality in Wales', *Op. Cit.*
53. Ireland, *Land of white gloves? Op. Cit.*, p. 10.

CHAPTER 5

A Land of White Gloves? Life and Death in Georgian Wales

Introduction

On Monday 6 April 1812, Mary Robert, a twenty-two year old prostitute, was brought before George Hardinge at the Glamorganshire Court of Great Sessions to be sentenced to death for housebreaking. Robert, a native of the parish of Eglwysilan, had been convicted of breaking into the property of John and Anne Harris in the same parish, and stealing a silver watch as well as wearing apparel. Addressing her in a speech that the *Cambrian* described as "a most impressive address", Hardinge told her in solemn tones that he had "melancholy intelligence for [her]" and that "it is the will of the Law, and of mercy well understood, that *your* 'days are numbered,' and that you are now to die".[1] He would, he told her "bless the discretion of mercy" if he could spare her from her fate, but to do so would aim "a *death's blow* at the industry and virtue of the poor". Crimes such as hers, he went on, were occurring with such "alarming frequency" that a suitable example was required. He could:

> hesitate no more, and [would] turn a deaf ear to the voice of humanity itself, dear to me as it is, till I can indulge a more extensive and more beneficent humanity; that is, till I can banish the offence, if it is in my power, from the Calendar, by a determined use of that sword which the Law has put into my hands.[2]

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J. Walliss, *The Bloody Code in England and Wales, 1760–1830*,
World Histories of Crime, Culture and Violence,
https://doi.org/10.1007/978-3-319-74561-9_5

Hardinge acknowledged that Robert had confessed to her crime, although he added she had only done so once she had been taken into custody. Her confession was thus not a sign of genuine remorse, but, rather, "the effect of that coward, the Conscience of guilt…the mask of remorse was the hope to escape". He also told her that she could not use her youth as an excuse for her crime. She had, he told her, "come to years of discretion" and, indeed, was old enough to have children "if your habits with men had not been too dissipated and vicious". Concluding the sentence, Hardinge told her that he bore her "no enmity – it is against your offence alone", and enjoined her to take solace in the Chaplain of the Gaol, from whom she would "receive most humane and powerful help…in your preparation for Eternity":

> Much, however, is to depend upon yourself – upon a deep sense of your crime, and of your criminal habits; upon your faith in a Redeeming Saviour, at the right hand of your God, who makes intercession for us all; upon whom no prayer, no tear, not a sigh is lost, if it comes from the heart.
> Here, alas! My office ends.
> The Law takes the rest into a more inflexible hand. It commands me to award the Judgement of death![3]

Nevertheless, despite the undoubted power of Hardinge's oratory, Mary Robert did not expiate for her crime on the gallows as he insisted that she would. Rather, like the majority of those sentenced to death during the period, particularly if they were female, she was pardoned and received a lesser sentence (in her case transportation for life). In this chapter, I will turn my attention to the fate of those felons, such as Robert, who were sentenced to death at the Wales Courts of Great Sessions between 1760 and 1830. As we saw in the last chapter, those indicted at the Great Sessions were significantly more likely to have the indictment against them dismissed by a grand jury than in the English assizes previously discussed. If tried, they were also much more likely to both be acquitted and, if convicted, receive a sentence of death. In this chapter we shall see that, unless they had been convicted of murder, felons sentenced to death at the Wales Courts of Great Sessions were also much less likely to die on the gallows than those similarly convicted at English assizes. Indeed, as David J. V. Jones has argued, long before the capital statutes for property offences were repealed in England and Wales during the 1830s, capital punishment for most property offences had in practice already been largely abolished.[4]

Patterns of Sentences of Death, Pardons and Executions in Wales

Between 1760 and 1830 (see Table 5.1), an estimated 762 persons were sentenced to death at the Wales Courts of Great Sessions, only 101 of whom were subsequently executed (13%).[5] The percentage of capitally convicted felons in each c from a low of 4% (7 persons) in Pembrokeshire to 25% in Cardiganshire (9 persons). The largest number of executions, however, took place in Glamorganshire: 18% of all executions across Wales during the period took place in this one county and a third took place in one of the counties comprising the Brecon Circuit. While the percentage of felons executed in the Welsh counties were often higher than in the English counties previously discussed, this was largely a reflection of the small numbers of capital convictions in each county. A focus on percentages also masks the radically different experience of the Bloody Code in Wales and England. Whereas, for example, a resident of Kent and Lancashire would have had the opportunity to witness on average five and three executions per year respectively over the period, a resident of Wales would have only been able to witness one on average per year—and only then if they were willing to travel the length and breadth of the principality to do so. Even the experience of the Bloody Code in Cornwall and Oxfordshire, where there were on average one execution every twelve to eighteen months, would have been radically different to that in Glamorganshire (one every four years), Breconshire (one every eight years) or Radnorshire (one every twelve years). Indeed, a resident of Anglesey and Merionethshire would have only had the opportunity to witness an execution once every thirty-five years.

As in England, the majority of those sentenced to death and executed in Wales were male (see Table 5.2). Only 12 and 8% of those sentenced to death and executed respectively were female. Across the twelve counties, males were also more likely to be executed than females: 14% of capitally convicted males paid the ultimate price for their crimes compared to just 8% of females. In some counties, a higher percentage of females were executed than males, but this again, as was the case in England, reflected both the relatively low numbers of females sentenced to death and the crimes for which they had been convicted (in the case of just under half, murder or infanticide). Again, however, a focus on percentages reveals patterns but masks the experience of the Bloody Code in

Table 5.1 The number and percentage of persons sentenced to death and executed at the Wales Courts of Great Sessions, 1760–1830

Circuit	*County*	*Executed*		*Pardoned*		*Total*	
Brecon	Glamorganshire	18 (13.5%)	33 (12%)	115 (86.5%)	248 (88%)	133	281 (100%)
	Breconshire	9 (9%)		90 (90%)		99	
	Radnorshire	6 (12%)		43 (88%)		49	
Chester	Denbighshire	15 (19%)	31 (14%)	64 (81%)	197 (86%)	79	228 (100%)
	Montgomeryshire	9 (9%)		93 (91%)		102	
	Flintshire	7 (15%)		40 (85%)		47	
Carmarthenshire	Carmarthenshire	14 (15%)	27 (14%)	79 (85%)	162 (86%)	94	190 (100%)
	Cardiganshire	9 (25%)		27 (75%)		36	
	Pembrokeshire	4 (7%)		56 (93%)		60	
North Wales	Caernarvonshire	6 (20%)	10 (16%)	24 (80%)	53	30	63 (100%)
	Anglesey	2 (17%)		10 (83%)		12	
	Merionethshire	2 (9.5%)		19 (90.5%)		21	
Total		101 (13%)		660 (87%)		762[a] (100%)	

[a]One capitally convicted felon in Carmarthenshire committed suicide before his execution

Table 5.2 The number and percentage of males and females sentenced to death and executed at the Wales Courts of Great Sessions, 1760–1830

Circuit	*County*	*Executed*		*Pardoned*		*Total*	
		Male	*Female*	*Male*	*Female*	*Male*	*Female*
Brecon	Glamorganshire	17 (5%)	1 (8%)	104 (95%)	11 (92%)	121 (100%)	12 (100%)
	Breconshire	9 (10%)	0	81 (90%)	9 (100%)	90 (100%)	9 (100%)
	Radnorshire	4 (9%)	2 (33%)	39 (91%)	4 (67%)	43 (100%)	6 (100%)
Chester	Denbighshire	14 (19%)	1 (17%)	59 (81%)	5 (83%)	73 (100%)	6 (100%)
	Montgomeryshire	9 (10%)	0	78 (90%)	15 (100%)	87 (100%)	15 (100%)
	Flintshire	7 (18%)	0	31 (82%)	9 (100%)	38 (100%)	9 (100%)
Carmarthenshire	Carmarthenshire	14 (17%)	0	68 (83%)	11 (100%)	83 (100%)	11 (100%)
	Cardiganshire	7 (22%)	2 (50%)	25 (78%)	2 (50%)	32 (100%)	4 (100%)
	Pembrokeshire	4 (8%)	0	46 (92%)	10 (100%)	50 (100%)	10 (100%)
North Wales	Caernarvonshire	5 (21%)	1 (17%)	19 (79%)	5 (83%)	24 (100%)	6 (100%)
	Anglesey	2 (18%)	0	9 (82%)	1 (100%)	11 (100%)	1 (100%)
	Merionethshire	2 (12%)	0	15 (88%)	4 (100%)	17 (100%)	4 (100%)
Total		94 (14%)	7 (8%)	574 (86%)	86 (92%)	669 (88%)	93 (12%)

Wales. Seven of the twelve Welsh counties never saw a woman executed during the period, while the remaining five saw at most one woman go to the gallows every thirty-five years. In Wales, as in England, the gallows were largely reserved for males.

Patterns of Executions and Pardons

In Chapter 3, we saw how the pattern of sentences of death and executions at the Old Bailey and in the four English counties selected for analysis changed between 1760 and 1830. The number of all felons sentenced to death at the Old Bailey increased between 1760 and 1783, although the percentage of capitally convicted felons who went to their deaths declined. Following on from this, between 1783 and 1787, there was an increase in both the number and percentage of felons executed followed by a decline in both between 1788 and 1808. Finally, 1809–1829 saw a return to large numbers and percentages of capitally convicted felons going to the gallows.[6] In Cornwall, both the number and percentage of felons executed increased between 1760 and 1770, before the former declined. Both then increased markedly over the course of the 1780s, before broadly declining for the remainder of the period. In Kent, both the number and percentage of executions declined until 1770–1774, when both started to increase, peaking between 1785 and 1789. For the remainder of the period, both then declined, albeit with slight increases in the number of executions between 1800–1804 and 1820–1824. Lancashire too saw a rapid increase in the number and percentage of executions, reaching a peak slightly later than the other counties in 1800–1804. After this, the percentage of executions declined rapidly for the remainder of the period, although the number declined at a slower rate, with a temporary increase during the second decade of the nineteenth century. Finally, in Oxfordshire the number of felons expiating for their crimes on the gallows remained relatively stable throughout the entire period, never increasing above one per year on average.

Between 1760 and 1780, both the number and percentage of felons executed in Wales increased, albeit with a dip in the latter between 1765–1769 and 1775–1779 (see Fig. 5.1). As was the case in England, during the 1780s both the number and percentage then increased rapidly, reaching a peak of twenty-four executions (or 32% of those sentenced to death) between 1785 and 1789. Both then fell until 1810, although there was another peak in the percentage executed between 1795 and

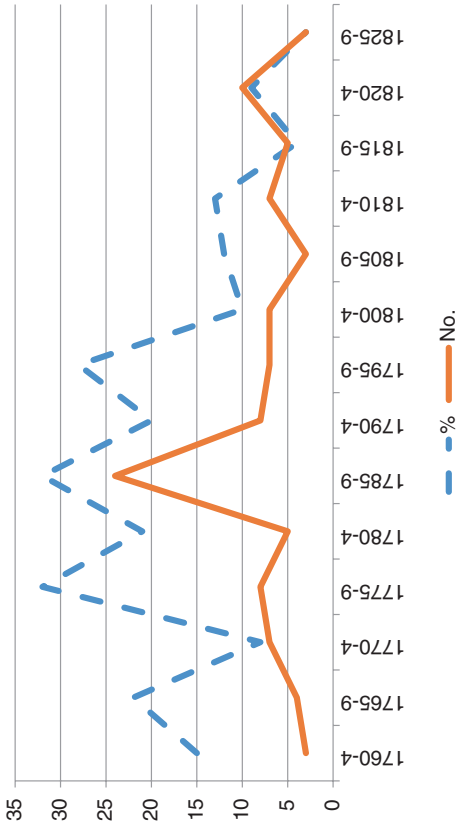


Fig. 5.1 The number and percentage of persons sentenced to death and executed at the Wales Courts of Great Sessions, 1760–1830

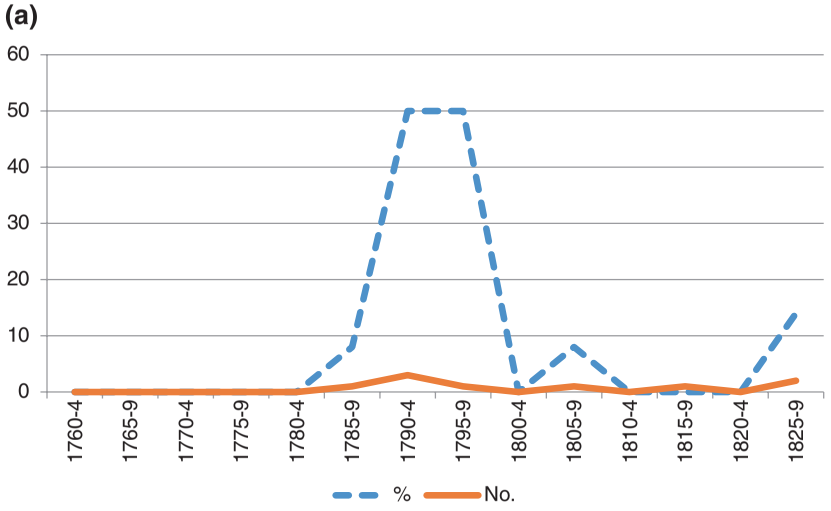
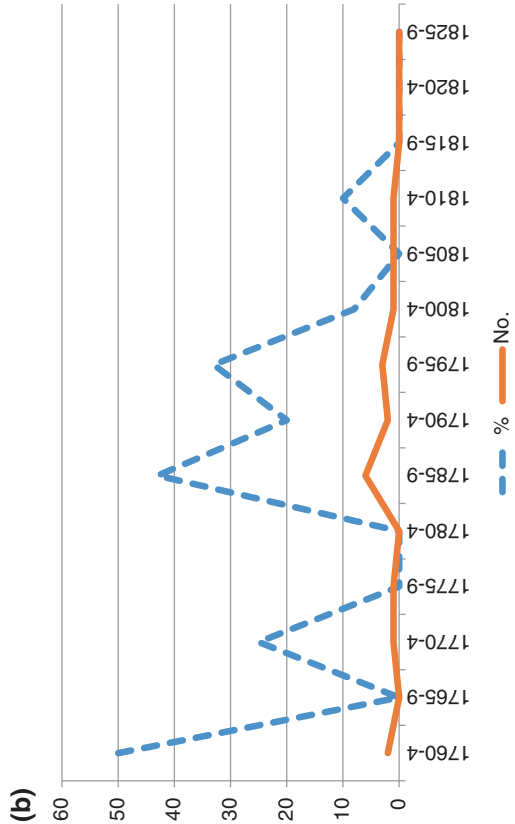


Fig. 5.2 **a** The number and percentage of persons executed at the Breconshire Courts of Great Sessions, 1760–1830. **b** The number and percentage of persons executed at the Glamorganshire Courts of Great Sessions, 1760–1830. **c** The number and percentage of persons executed at the Radnorshire Courts of Great Sessions, 1760–1830



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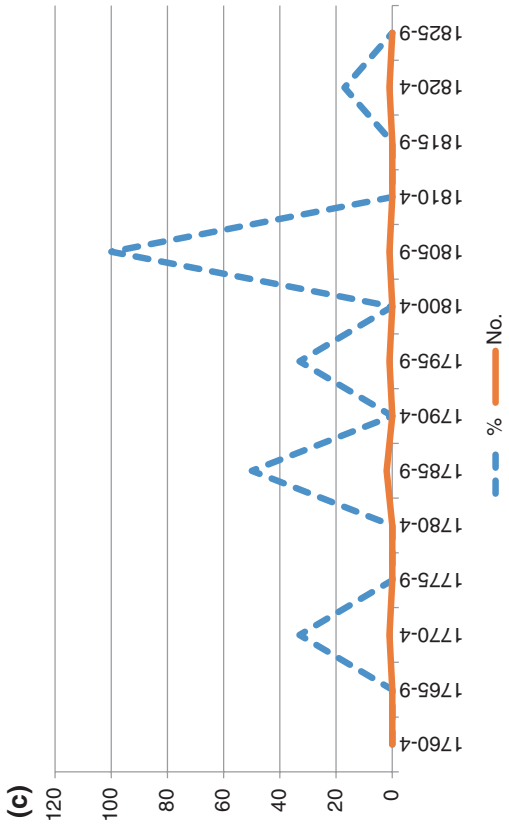

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1799. Between 1810 and the end of the period, there were then two increases in the number and percentage executed between 1810–1814 and 1820–1824, until both fell (reaching 3 executions/3% between 1825 and 1829). In this way, David J. V. Jones is only partly correct to argue that by the turn of the nineteenth century, the Bloody Code was a dead letter in the principality. Rather, the evidence in Fig. 5.1 shows that it had never really had much of a role in Welsh society. With the exception of the dramatic rise in the 1780s, no more than two felons went to the gallows across Wales on average per year over the seventy-year period. Only twenty-three of the seventy years saw more than one execution across the whole principality, and nineteen saw no executions at all.

The Bloody Code had certainly made few inroads over the period into the three counties that comprised the Brecon Circuit (see Fig. 5.2a–c). Just over half of the seventy years saw no felon go to the gallows across the circuit, and only six saw more than one. Glamorganshire only saw executions in fourteen of the seventy years, while Breconshire and Radnorshire only saw them in eight and six years respectively. Across the Circuit, the percentage of felons dying on the gallows peaked in 1785–1789 (Glamorganshire and Radnorshire) and 1790–1794 (Breconshire), when fourteen went to their deaths. Indeed, just under half of those executed across the Brecon Circuit between 1760 and 1830 were executed in just this one decade.

Crimes Against the Person: Murder, Infanticide and Rape

As we saw in the previous chapter, just over a quarter of those indicted on the Brecon Circuit between 1760 and 1830 had been accused of a crime against the person, typically a form of non-fatal assault. Historians have offered different interpretations of the level of violence in Georgian Wales. While some have celebrated it as a society characterized by relative peace and harmonious relationships, Russell Davies has argued that within Georgian Wales "men and women alike turned naturally to assaulting those who offended them".[7] Similarly, David Howell has characterized it as a "violent, unsqueamish, brutal society easily given to lawlessness and physical affray" and "a brutal and unsqueamish society, in which men and women alike turned naturally to assaulting those who offended them".[8] If indictments can be any indicator of levels of crime in society, the records of the Courts of Great Sessions suggest that levels

of violent crime in Georgian Wales were relatively high. Just over half of those prosecuted at the Montgomeryshire Court of Great Sessions between 1690 and 1790 were accused of a crime against the person (53%), while just over a third of those listed on the NLW Crime and Punishment gaol file database between 1760 and 1830 had been accused of an offence against the person (not including sexual assaults). Similarly, just under two-thirds of those listed on the gaol files between 1760 and 1830 accused of a violent crime were alleged to have committed either murder or attempted murder (64%).[9]

Murder

Between 1730 and 1830, some 686 and 374 persons were accused of murder or attempted murder respectively at the Wales Courts of Great Sessions.[10] Table 5.3 shows the number of persons indicted, prosecuted and executed for murder on the Brecon Circuit between 1760 and 1830.

Just under a hundred persons were indicted for murder on the Brecon Circuit over the period, half of whom were indicted in Glamorganshire. Grand juries rejected just under a third of indictments, while petty juries returned guilty verdicts in just over two-fifths of the cases that they heard, returning roughly equal percentages of verdicts of manslaughter and murder. The most noticeable difference between the individual counties were that significantly higher percentages of ignoramus bills were returned in Radnorshire and Glamorganshire than Breconshire: a

Table 5.3 The number of persons indicted and convicted of murder as well as the number and percentage of ignoramus and partial verdicts at the Brecon Courts of Great Sessions, 1760–1830

County	*Number indicted*	*Number and % ignoramus*	*Number and % guilty manslaughter*	*Number and % guilty and executed*
Breconshire	25	2 (8%)	4 (16%)	5 (20%)
Glamorganshire	48	19 (40%)	8 (17%)	8 (17%)
Radnorshire	25	10 (40%)	2 (8%)	2 (8%)
Total[a]	98	31 (31%)	14 (14%)	15 (15%)

[a]The verdicts are missing from 10 indictments for murder (Breconshire: 5; Glamorganshire: 3; Radnorshire: 2). My presumption is that these persons were either found not guilty, an ignoramus verdict was returned or they were convicted of a lesser charge, as there is no record of an execution. They have not been included in the calculations in this figure

person indicted in one of the two former counties was five times more likely to have the bill against them rejected by a grand jury than in Breconshire. In contrast, petty juries in Breconshire and Glamorganshire were significantly more likely to return a manslaughter verdict than those in Radnorshire. They were also more than twice as likely to have decided that the person indicted was guilty as charged. All of those convicted of murder paid for their crime on the gallows.

King and Ward's argument that the gallows were largely reserved for murderers on the periphery holds particularly true in the case of Wales (see Table 5.4).[11] Whereas, as we saw in the last chapter, only 14% of those executed across the four counties were convicted murderers, in Wales they comprised one in five of those executed. As was the case in England, the majority of those executed across Wales had been convicted of a property offence: however, a larger proportion of executions in Wales were of convicted murderers than in the English counties. Just under a quarter of those executed on the Chester Circuit (minus Chester) had been convicted of murder, while on the North Wales and Brecon Circuits it was 38 and 45% respectively. Over half of executions on the Carmarthen Circuit were of convicted murders. In Denbighshire and Montgomeryshire, around a fifth of executions over the period were of convicted murderers, while all four of those executed in Pembrokeshire had been convicted of murder.

Table 5.4 The number of murderers executed at the Wales Courts of Great Sessions and as a percentage of the total number of executions

Circuit	*County*	*Number and % of executions for murder*
Brecon	Glamorganshire	8 (44%)
	Breconshire	5 (56%)
	Radnorshire	2 (34%)
Chester	Denbighshire	3 (20%)
	Montgomeryshire	2 (22%)
	Flintshire	2 (29%)
Carmarthenshire	Carmarthenshire	6 (43%)
	Cardiganshire	5 (56%)
	Pembrokeshire	4 (100%)
North Wales	Caernarvonshire	2 (34%)
	Anglesey	0
	Merionethshire	1 (50%)
Total		40 (100%)

Table 5.5 The number of males and females indicted and convicted of murder as well as the number and percentage of ignoramus and partial verdicts at the Brecon Courts of Great Sessions, 1760–1830

Sex	*Number indicted*	*Number and % ignoramus*	*Number and % guilty manslaughter*	*Number and % guilty and executed*
Male	93	29 (31%)	13 (14%)	15 (16%)
Female	5	2 (40%)	1 (20%)	0
Total	98	31 (32%)	14 (14%)	15

As in England, males comprised the majority of those executed for murder across Wales (see Table 5.5): only 10% of the 667 persons indicted at the Wales Great Sessions for murder in the century after 1730 were female (68 females). Grand juries rejected roughly a third of the indictmentsWales against these females (21 or 32%) and trial juries found all but four of those tried not guilty (89%). Only three were convicted, and one woman—a double-murderess, Margaret Jones—was executed.[12] Only one of the five women indicted for murder on the Brecon Circuit between 1760 and 1830 was convicted, and she was convicted of the lesser crime of manslaughter. The remainder had the indictments against them dismissed by grand juries or were acquitted in equal numbers. While, on one level, this high acquittal rate could be interpreted as evidence of chivalry on the part of both grand and petty jurors, it may also stem from the type of murders for which females were accused. In contrast to males, a large number of females were indicted for forms of murder that were difficult to prove in court, such as poisoning, drowning or, in some cases, with their bare hands. Rather than condemning an innocent woman to death in the case of an ambiguous death, it seems, both grand and petty juries erred on the side of caution and returned ignoramus and not-guilty verdicts respectively.

Infanticide

Juries would also appear to have erred on the side of caution in regard to one particular form of female homicide: infanticide. Between 1730 and 1830, 186 females were indicted for infanticide at the Wales Courts of Great Sessions. Grand juries dismissed just over a third of infanticide indictments (35%), while petty juries returned not guilty verdicts in over

two-thirds of cases that they heard (68%). Only six females were sentenced to death over the hundred-year period for infanticide, three of whom were subsequently executed.[13] Fourteen females were convicted of concealing the birth of their child after 1803.

Only one of the thirty-five females indicted on the Brecon Circuit over the period was convicted and executed (see Table 5.6); Mary Morgan, who was convicted in Radnorshire in 1805. As was the case in England, Welsh grand and petty juries would appear to have gone out of their way to give females accused of infanticide the benefit of the doubt, only returning guilty verdicts in cases where evidence of a violent death could not be explained away.[14] For example, in the case of Dorothy ferch Thomas, the only woman executed for infanticide in Denbighshire between 1661 and 1730, her infant's body showed obvious signs of violence.[15] Likewise, in the case of Mary Morgan, not only did her infant's body show obvious signs of violence, but she confessed to the crime in court, declaring that she "…determined, therefore, to kill it, poor thing!… Out of the way, being perfectly sure that I could not provide for it myself".[16] It would also appear that the trial judge, George Hardinge, was particularly keen to make an example of Morgan after a jury two weeks previously had returned a partial verdict in Breconshire in the case of a woman who had murdered her child with a pair of scissors. In a letter to the Bishop of St. Asaph a few weeks after the trial he related how "… in our part of Wales it is thought no crime to kill a bastard child", adding "We had two cases equally desperate. One of the culprits (perhaps the worst of the two in a moral issue) escaped. Both of the offences were proved by irresistible evidence".[17] Hardinge also did not approve of the recent introduction of Lord Ellenborough's Act, preferring instead the stricter terms of the 1624 statute on infanticide. In August 1805, he raised the issue of the Act in his address to a Breconshire grand jury, telling them

Table 5.6 The number of females indicted and convicted of infanticide as well as the number of ignoramus verdicts on the Brecon Circuit, 1760–1830

County	*Number indicted*	*Number and % ignoramus*	*Number and % guilty and executed*
Breconshire	5	2 (40%)	0
Gamorganshire	23	12 (52%)	0
Radnorshire	7	1 (14%)	1 (14%)
Total	35	15 (43%)	1 (3%)

that although he "dare not as a judge arraign [the Act]…I am not able to fathom it. The peculiar nature of this crime, and of the motives to it, appear to me either over-looked, or superficially examined".[18]

It is noticeable that almost two-thirds of the indictments for infanticide were in Glamorganshire. On one level this may reflect the fact that this county was much more populous than Radnorshire and Breconshire, with, as we have seen, a rapidly increasing population during the period due to nascent industrialization. A larger population not only logically increased the pool of potential offenders, but also brought with it an increased likelihood that the crime, or the circumstances leading to it, might be discovered. It may also have been the case that small rural communities in Breconshire and Radnorshire preferred to deal with the situation informally rather than through formal legal means, fearing the stigma that it could bring to the community. In contrast, officials in more densely populated, relatively anonymous industrial areas may have taken a harder line on such women. Another explanation, put forward by Nicholas Woodward in his work on infanticide at the Great Sessions, concerns the impact of differing courtship patterns. Woodward highlighted a north/south split in Wales, noting not only the greater preponderance of indictments for the crime in southern Wales, but also that this was correlated with higher levels of illegitimacy.[19] Research on illegitimacy in Wales has found that levels of illegitimate births were generally higher in Wales than in England from at least the late-seventeenth century. This has been explained as being stemming from marriage and courtship rituals peculiar to the principality, such as informal or clandestine weddings or the custom of *caru yn y gwely* or "bundling", where couples would meet at night and "court in the bed" before marriage.[20] According to Woodward, these courtship rituals, alongside other factors, such as attitudes towards violence, may be one explanation why both illegitimacy and indictments for infanticide were higher in the southern Welsh counties.

Rape

Between 1730 and 1830, 54 males were indicted for rape at the Wales Courts of Great Sessions alongside four females who were accused to aiding and abetting a rape. Just over a third never faced a trial jury either because of an ignoramus bill or because their alleged victim did not attend court to prosecute, and of those that were tried, none were convicted.[21] Of the eleven males indicted for the crime on the Brecon

Circuit between 1760 and 1830, just over half had their indictments dismissed by grand juries, the rest being acquitted (see Table 5.7).

As was the case in England, Welsh females were more likely to successfully prosecute their alleged attacker if they accused him of sexual assault rather than rape, although this was still a relatively unlikely prospect. Of the 109 males indicted for attempted rape and two females indicted for aiding them across Wales between 1730 and 1830, almost a fifth never stood trial (42 persons); of those that did, only fifteen were convicted, while a further seven were convicted of common assault.[22] Similarly, just over one in five of males indicted on the Brecon Circuit between 1760 and 1830 for sexual assault had the indictment against them dismissed by the grand jury, and only four were successfully prosecuted. The harshest sentence for a sexual assault against a female on the Brecon Circuit over the seventy-year period was thus the sentence passed on William Leek in 1799 for the sexual assault of one Anne Morgan: to be pilloried and then imprisonment for three years (see Table 5.8).

Table 5.7 The number of males indicted and convicted of rape as well as the number of ignoramus verdicts at the Brecon Courts of Great Sessions, 1760–1830

County	*Number indicted*	*Number and % ignoramus*	*Number and % guilty*	*Number and % executed*
Breconshire	3	2 (67%)	0	0
Glamorganshire	7	4 (57%)	0	0
Radnorshire	1	0	0	0
Total	11 (100%)	6 (100%)	0	0

Table 5.8 The verdicts passed on persons accused of sexual crimes against females other than rape at the Brecon Courts of Great Sessions, 1760–1830

County	*Total*	*Verdict*			
		Ignoramus	*No prosecution*	*Not guilty*	*Guilty*
Breconshire	5	2	1	0	2
Glamorganshire	12	5	0	2	2
Radnorshire	4	2	0	0	0
Total	21[a]	9 (42%)	1 (5%)	2 (10%)	4 (19%)

[a]Verdicts are not shown in five cases (Glamorganshire: 3; Radnorshire: 2)

In her analysis of violent crime in Georgian Wales, Katherine Watson rightly argued that "Welsh women seem to have been consistently regarded as less significant than men, both as the victims and perpetrators of violence".[23] On the one hand, juries typically gave females accused of infanticide the benefit of the doubt, only convicting them in exceptional cases where the evidence and a confession unambiguously pointed to their culpability. However, on the other, males accused of crimes of sexual violence against females were also rarely successfully prosecuted and, if they were, it was not for the capital crime of rape. In contrast, as we saw in Chapter 2, males and females in England did suffer the ultimate penalty for these crimes, albeit not in very large numbers. Indeed, as Watson observes, the only males executed for rape in Wales between 1730 and 1830 were in Monmouthshire, which was part of the Oxford assize circuit. Returning to Richard Ireland's argument in the previous chapter that formal legal proceedings represented "a moral audit of the community" conducted by outsiders, it would appear that Welsh juries were particularly reluctant for moral crimes such as infanticide to be aired in public and punished formally, possibly preferring instead for such crimes to be dealt with through informal mechanisms and sanctions within the community.[24]

Property Offences

General Patterns

Table 5.9 shows the number of persons sentenced to death, executed or pardoned for property offences at the Wales Courts of Great Sessions, 1760–1830. Between 1760 and 1830, only 9% of convicted property offenders at the Wales Courts of Great Sessions were subsequently executed. The percentage of property offenders executed ranged from a low of 2% in Breconshire to a high of 15% in Denbighshire, with just over half of the twelve counties executing 10% or less of property offenders sentenced to death at their Great Sessions. Only 6% of convicted property offenders were executed on the Brecon Circuit, the majority going to the gallows in Glamorganshire (66%). Again, however, a focus on percentages obscures the actual experience of contemporaries. A resident of Denbighshire and Glamorganshire, for example, would have only seen on average one property offender die on the gallows every six and seven

Table 5.9 The number and percentage of persons sentenced to death and executed for property offences at the Wales Courts of Great Sessions, 1760–1830

Circuit	*County*	*Executed*		*Pardoned*		*Total*	
Brecon	Glamorganshire	10 (8%)	15 (6%)	111 (92%)	239 (94%)	121	254
	Breconshire	2 (2%)		86 (98%)		88	
	Radnorshire	3 (7%)		42 (93%)		45	
Chester	Denbighshire	11 (15%)	23 (11%)	63 (85%)	194 (89%)	74	217 (100%)
	Montgomeryshire	7 (7%)		92 (93%)		99	
	Flintshire	5 (11%)		39 (89%)		44	
Carmarthenshire	Carmarthenshire	8 (10%)	12 (7%)	76 (90%)	155 (93%)	84	167 (100%)
	Cardiganshire	4 (13%)		26 (87%)		30	
	Pembrokeshire	0		53 (100%)		53	
North Wales	Caernarvonshire	3 (12.5%)	6 (11%)	21 (87.5%)	50 (89%)	24	56 (100%)
	Anglesey	2 (17%)		10 (83%)		12	
	Merionethshire	1 (5%)		19 (95%)		20	
Total		56 (9%)		638 (91%)		694 (100%)	

years respectively over the period. In Radnorshire and Caernarvonshire, it would have been once every twenty-three years, in Breconshire and Anglesey, once every thirty-five years; in Merionetheshire, only once in seventy-years; and in Anglesey never.

Throughout the seventy-year period, the number of property offenders going to the gallows across Wales remained relatively static with the exception of the dramatic rise in the latter half of the 1780s, never rising above nine per decade in the entire of the principality (see Fig. 5.3). Only fourteen years between 1760 and 1830 saw more than one property offender executed per year across the whole of Wales, and forty saw none at all executed. While the law classed many property offences as capital offences during the period, and sentences of deaths were passed on numbers of Welsh men (and some women), in most cases such sentences were just a legal formality. Rather than being a regular occurrence, executions for property offences were an extremely rare aberration in the life of the community.

Executions of property offenders were certainly a rare occurrence in the three counties that comprised the Brecon Circuit (see Fig. 5.4). Forty-seven of the seventy years saw no property offender go to the gallows across the Circuit, and only four years saw more than one. Glamorganshire saw no executions for property offences in all but seven years, while Radnorshire and Breconshire saw none in all but three and two years respectively. The last execution on the Brecon Circuit for a property offence was in Glamorganshire in 1810, although Radnorshire and Breconshire executed their last property offenders over a decade before, in 1797.

Table 5.10 shows the number and percentage of felons executed across Wales for various types of property offences between 1760 and 1830. The majority of property offenders sentenced to death across Wales during the period had been convicted of sheep stealing or horse stealing. Just under half of all capitally convicted property offenders had been convicted of one or other of these offences. Both were, however, relatively speaking unlikely to expiate for their crime on the gallows: only 3 and 8% of sheep- and horse-thieves respectively were subsequently executed (roughly similar percentages to those found in the four counties). As was the case in England, sheep stealing was perceived by contemporaries as a crime of desperation, and typically not a crime engaged in by violent criminal gangs. Consequently, those capitally convicted of the crime were rarely executed. Similarly, those convicted of

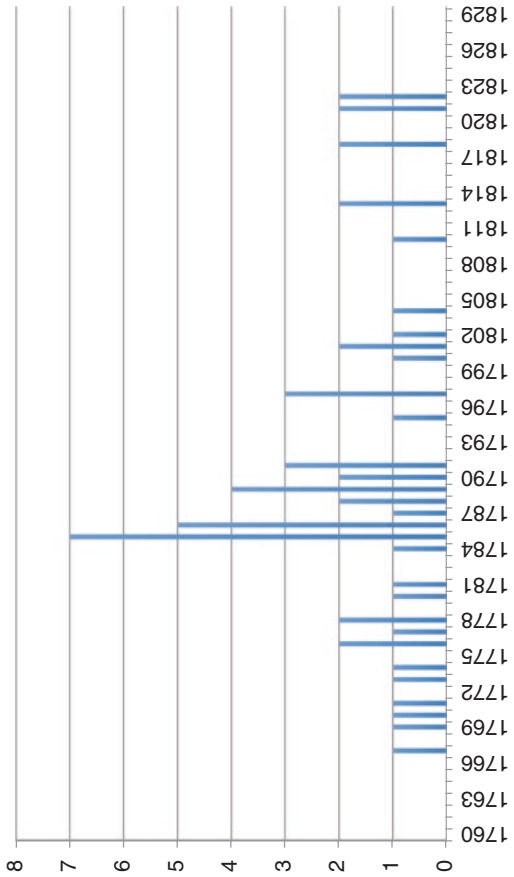

Fig. 5.3 The number of persons executed for property crime at the Wales Courts of Great Sessions, 1760–1830

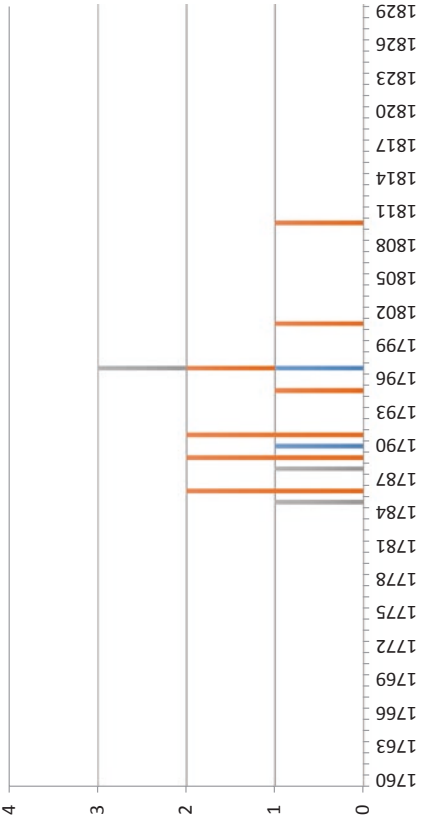

Fig. 5.4 The number of property offenders executed at the Brecon Courts of Great Sessions, 1760–1830

Table 5.10 The number and percentage of property offenders sentenced to death, executed and pardoned at the Wales Courts of Great Sessions, 1760–1830

Crime type	*Executed*	*Pardoned*	*Total*
Sheep stealing	6 (3%)	169 (97%)	175 (100%)
Horse stealing	13 (8%)	153 (92%)	166 (100%)
Burglary	23 (16%)	122 (84%)	145 (100%)
Housebreaking	2 (2%)	60 (98%)	62 (100%)
Larceny in a dwelling house	1 (3%)	35 (97%)	36 (100%)
Highway robbery	4 (19%)	17 (81%)	21 (100%)
Fraud and forgery	3 (19%)	13 (81%)	16 (100%)
Monetary offences	3 (38%)	5 (62%)	8 (100%)
Robbery	1 (12.5%)	7 (87.5%)	8 (100%)
Cattle stealing	0	33 (100%)	33 (100%)
Larceny	0	20 (100%)	20 (100%)
Felony	0	3 (100%)	3 (100%)
Larceny from the person	0	1 (100%)	1 (100%)
Total	56 (9%)	638 (91%)	695 (100%)

horse stealing in Wales could also largely expect to be spared the gallows because, although horses were expensive items, the crime tended not to involve violence.[25] In contrast, significantly less mercy was shown to those convicted of burglary, highway robbery, fraud and forgery and, particularly, monetary offences for the reasons discussed in Chapter 2.[26] No person convicted of cattle stealing, larceny from the person or larceny was executed in Wales during the period.

The broader Welsh patterns were largely replicated on the Brecon Circuit (see Table 5.11). Just over half of those sentenced to death for property offences had been convicted of either sheep stealing or horse stealing, while a third of those executed on the Circuit had been convicted of burglary. However, in contrast to the general Welsh pattern, relatively high numbers of both crimes were subsequently executed, including one female for sheep stealing in Radnorshire in 1797. As King and Ward have shown, two of the four persons sentenced to death on the Circuit for sheep stealing were left to hang by Justice Hardinge who saw "dangerous lenity" in the fact that no one been executed on the Circuit for the crime "these twenty or thirty years".[27]

Several factors would appear to have combined in Wales to ensure that relatively few capitally convicted property offenders ended their life on the gallows. Primarily, the relatively low numbers of persons indicted at

Table 5.11 The number and percentage of persons executed for each property offence type at the Brecon Courts of Great Sessions, 1760–1830

Crime type	*County*						*Total*	
	Breconshire		*Glamorganshire*		*Radnorshire*			
	SoD.	*Ex.*	*SoD.*	*Ex.*	*SoD.*	*Ex.*	*SoD.*	*Ex.*
Sheep stealing	41	0	29	3 (10%)	15	1 (7%)	85 (100%)	4 (100%)
Horse stealing	17	0	19	2 (10.5%)	17	2 (13%)	53 (100%)	4 (100%)
Burglary	7	1 (14%)	25	4 (16%)	4	0	36 (100%)	5 (100%)
Housebreaking	12	0	9	0	2	0	23 (100%)	0
Cattle stealing	5	0	6	0	3	0	14 (100%)	0
Highway robbery	1	0	12	1 (8%)	0	0	13 (100%)	1 (100%)
Larceny in a dwelling house	0	0	8	0	2	0	10 (100%)	0
Fraud and forgery	1	0	7	0	1	0	9 (100%)	0
Larceny	2	0	3	0	1	0	6 (100%)	0
Monetary offences	1	1 (100%)	2	0	0	0	3 (100%)	1 (100%)
Larceny from the person	1	0	0	0	0	0	1 (100%)	0
Robbery	0	0	1	0	0	0	1 (100%)	0
Total	88 (100%)	2 (2%)	121 (100%)	10 (8%)	45 (100%)	3 (7%)	254 (100%)	15 (6%)

the Great Sessions, both in general and for serious property offences in particular, would have been seen as not requiring large numbers, if any, exemplary executions to deter others. Petty juries also appear to have consistently acted in a way to mitigate the severity of the law by finding large numbers of felons guilty of a lesser, non-capital charge or by returning partial verdicts. Finally, the justices, who had typically visited the same counties for many years and thereby developed relationships with key members of local communities, would have been acutely aware of the powerful feelings against capital punishment within the local community. Notwithstanding the example of George Hardinge cited above, in counties where a property offender had not been executed for a number of years, possibly decades, justices must have felt strong disincentives to leave any to hang.[28]

Executions, Pardons and Population

Between 1750 and 1831, the population of Wales increased by almost two-thirds from an estimated 490,000 to 806,182. Over the same period, the population of the three counties that comprised the Brecon Circuit more than doubled from an estimated 103,800 to 211,171. Glamorganshire saw the largest increase among the three counties on the Brecon Circuit over the period; its population increasing by over 130% from an estimated 55,200 in 1750 to 131,732 in 1831. In contrast, Breconshire and Radnorshire saw more modest population increases of 66 and 58% respectively (or from an estimated 29,400 and 19,200 in 1750 to 48,799 and 30,640 respectively in 1831).[29] However, whereas the number of persons indicted at English assizes over this period increased, the numbers indicted at the Wales Courts of Great Sessions declined. The NLW Crime and Punishment gaol file database lists 239 persons in 1750 compared with 143 in 1830, a decline of 40% over the period. Similarly, as we saw in Chapter 3, between 1760 and 1830, the number of persons indicted on the Brecon Circuit declined by a quarter, from an average of 66 persons per annum on average in the 1760s to an average of 50 persons per annum in the 1820s. Only Glamorganshire witnessed an increase in the number of persons indicted, but this was only a modest increase of 13% that in no way matched the increase in that county's population over the same period.

As we saw in Chapter 3, between 1760 and 1830, while both the population of the four English counties and the number of property offenders sentenced to death increased, the mean annual number per head of population actually executed largely declined. Kent, in particular, witnessed a large decline over the first three decades of the nineteenth century, from 2.44 between 1800 and 1809 to 0.48 per 100,000 between 1820 and 1829. Similarly, the mean annual number of property offenders going to the gallows in Lancashire almost halved from 0.43 per 100,000 between 1780–1789 to 0.22 per 100,000 in 1820–1829. Unfortunately, as noted previously, there are no estimates for the population size of individual Welsh counties in 1760. Consequently, Fig. 5.5 shows the mean annual number of sentences of death and executions for property offences in Wales per head of population over the first three decades of the nineteenth century.

Across Wales, the mean annual number of property offenders sentenced to death per 100,000 population doubled from two between 1800–1809 to four from 1820–1829. This pattern was found on all four Great Session Circuits. Between 1800–1809 and 1820–1829, the mean annual number of property offenders sentenced to death on the Chester (minus Chester) and Carmarthen Circuits increased from 2.36 and 0.95 to 3.63 and 1.66 per 100,000 population respectively. On the North Wales Circuit the mean annual number increased from 0.46 to 1.14. Over the same period, the mean annual number executed remained extremely low and declined slightly from 0.08 per 100,000 population in 1800–1809 to 0.06 in 1820–1829. No property offenders were executed on the Carmarthen Circuit over the period, while on the Chester Circuit (minus Chester) the mean annual number of property offenders executed declined from 0.14 to 0.11 per 100,000 population over the period. In contrast, the North Wales Circuit saw a slight increase: from 0 to 0.07 per head of population.

Figure 5.6 shows the mean annual number of sentences of death for property offences per head of population on the Brecon Circuit over a longer period, using the 1750 population estimate for the three counties.[30] Between 1800–1809 and 1820–1829, the mean annual number sentenced to death on the Circuit increased from 2.64 to 4.84. Over the same period, the mean annual number executed declined from 0.7 to 0. Between 1750 and 1830, the mean annual number of property offenders executed across the principality never reached one per year.[31]

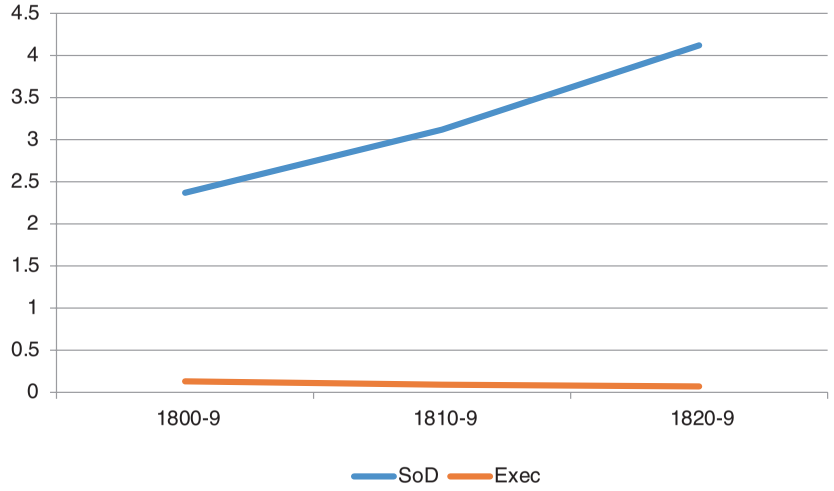

Fig. 5.5 Mean annual number of sentences of death and executions for property offences per 100,000 population at the Wales Courts of Great Sessions, 1800–1830

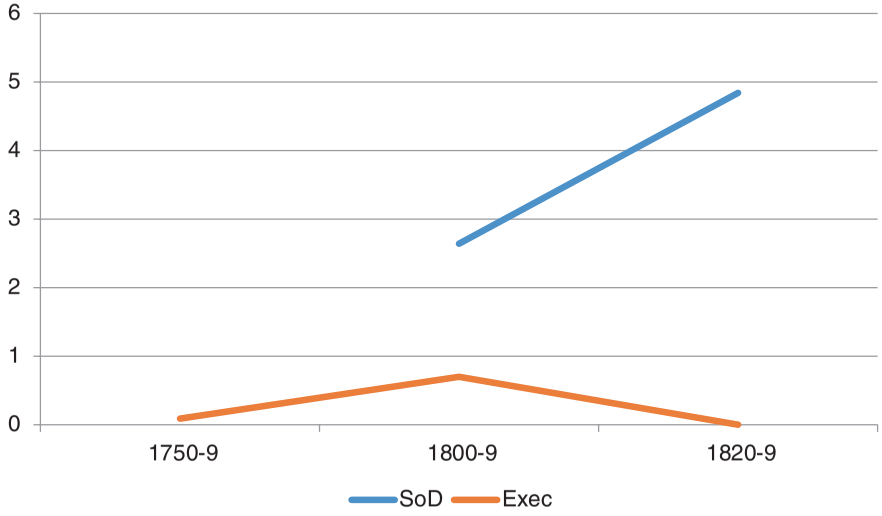

Fig. 5.6 Mean annual number of sentences of death and executions for property offences per 100,000 population at the Brecon Courts of Great Sessions, 1750–1830

War, Dearth and the Gallows

In Chapter 3, we also saw that, although more persons were indicted on average per year in periods of peace than in wartime, the differences were not as large as in English counties during the period. Whereas 72% of indicted property offenders in the four English counties were indicted during years of peace, only 58% of indicted property offenders on the Brecon Circuit were indicted during these years. Similarly, although Wales was afflicted by patterns of dearth and other social problems comparable with those found in England during the period, no association was found between the cost of living and the number of persons indicted for property offences per annum on the Brecon Circuit.

Pearson R tests indicated that there was a significant positive association between the cost of living and the annual number of property offenders sentenced to death both in Wales generally and on the Brecon Circuit.[32] In both cases the association was stronger during periods of peace than during wartime.[33] There was also a significant positive association between the annual number of property offenders sentenced to death and the annual number executed.[34] As was the case with the English counties, as the cost of living increased, more convicted felons were sentenced to death, and the more that were sentenced to death, the more were executed. This is particularly noteworthy in the case of the Brecon Circuit as, as we saw in Chapter 3, there was no association between the cost of living and the number of persons indicted per year for property offences. However, there was no association across either Wales or on the Brecon Circuit between the cost of living and the annual number of property offenders who went to their deaths.

Table 5.12 shows the number and percentage of property offenders sentenced to death and executed during periods of peace and war at the Wales Courts of Great Sessions. In contrast to the situation in the four English counties, higher numbers and percentages of property offenders were sentenced to death and executed at the Wales Courts of Great Sessions during periods of peace than during wartime (see Table 5.13). Across Wales, 69% of property offenders were sentenced to death and 66% went to the gallows during peacetime (476 and 37 persons respectively). In all of the Welsh counties with the exception of Merionethshire, larger numbers and percentages of property offenders were sentenced to death during periods of peace than wartime. A larger number and percentage were also executed during peacetime in eight

Table 5.12 The number and percentage of property offenders sentenced to death and executed during periods of peace and war at the Wales Courts of Great Sessions

Circuit	*County*	*Sentences of death*		*Executions*	
		Peace	*War*	*Peace*	*War*
Brecon	Glamorganshire	83 (69%)	38 (31%)	6 (60%)	4 (40%)
	Breconshire	58 (66%)	30 (34%)	1 (50%)	1 (50%)
	Radnorshire	31 (69%)	14 (31%)	2 (66%)	1 (34%)
Chester	Denbighshire	47 (64%)	27 (36%)	5 (45%)	6 (55%)
	Montgomeryshire	60 (61%)	39 (39%)	5 (71%)	2 (29%)
	Flintshire	32 (73%)	12 (27%)	3 (60%)	2 (40%)
Carmarthenshire	Carmarthenshire	66 (78%)	19 (22%)	7 (88%)	1 (12%)
	Cardiganshire	22 (73%)	8 (27%)	4 (100%)	0
	Pembrokeshire	41 (77%)	12 (23%)	0	0
North Wales	Caernarvonshire	21 (87.5%)	3 (12.5%)	2 (66%)	1 (34%)
	Anglesey	7 (58%)	5 (42%)	2 (100%)	0
	Merionethshire	8 (40%)	12 (60%)	0	1 (100%)
Total		476 (69%)	219 (31%)	37 (66%)	19 (34%)

Table 5.13 The number and percentage of persons sentenced to death for various property offences during periods of war and peace at the Wales Courts of Great Sessions, 1760–1830

Crime type	*Peace*		*War*	
	Sentences of death	*Executions*	*Sentences of death*	*Executions*
Sheep stealing	118 (68%)	4 (66%)	57 (32%)	2 (34%)
Horse stealing	113 (68%)	10 (77%)	53 (32%)	3 (33%)
Burglary	107 (74%)	17 (74%)	38 (26%)	6 (26%)
Housebreaking	48 (77%)	1 (50%)	14 (23%)	1 (50%)
Cattle stealing	17 (52%)	0	16 (48%)	0
Highway robbery	17 (81%)	2 (50%)	4 (19%)	2 (50%)
Larceny in a dwelling house	26 (72%)	1 (100%)	10 (28%)	0
Fraud and forgery	8 (50%)	0	8 (50%)	3 (100%)
Larceny	5 (25%)	0	15 (75%)	0
Monetary offences	6 (75%)	1 (34%)	2 (25%)	2 (66%)
Larceny from the person	1 (100%)	0	0	0
Robbery	8 (100%)	1 (100%)	0	0
Felony	1 (34%)	0	2 (66%)	0
Total	476 (68%)	37 (66%)	219 (32%)	19 (34%)

of the twelve counties. In Denbighshire and Merionethshire slightly more persons were executed during wartime, while in Breconshire and Pembrokeshire, identical numbers were executed in wartime and peacetime. However, there was no statistically significant association between the number of property offenders sentenced to death and executed during either period either in Wales as a whole, or in any of the individual counties.

This pattern was also repeated in terms of the types of property offence across Wales. With the exception of fraud and forgery, larceny, and felony, a larger number and percentage of persons were sentenced to death for each of the types of property offence in peacetime than during war. Similarly, with the exception of housebreaking, highway robbery and monetary offences, a larger number and percentage of persons were executed for each of the types of property offence in peacetime.

Likewise, on the Brecon Circuit, with the exception of cattle stealing, fraud and forgery and larceny, a larger number and percentage of persons were sentenced to death for each of the types of property offence in peacetime than during war (see Table 5.14). Moreover, the majority

Table 5.14 The number and percentage of persons sentenced to death for various property offences during periods of war and peace at the Brecon Courts of Great Sessions, 1760–1830

Crime type	*Peace*		*War*	
	Sentences of death	*Executions*	*Sentences of death*	*Executions*
Sheep stealing	58 (68%)	2 (50%)	27 (32%)	2 (50%)
Horse stealing	35 (66%)	3 (75%)	18 (34%)	1 (25%)
Burglary	27 (75%)	4 (80%)	9 (25%)	1 (20%)
Housebreaking	13 (57%)	0	10 (43%)	0
Cattle stealing	7 (50%)	0	7 (50%)	0
Highway robbery	11 (85%)	0	2 (15%)	1 (100%)
Larceny in a dwelling house	7 (70%)	0	3 (30%)	0
Fraud and forgery	7 (50%)	0	7 (50%)	0
Larceny	3 (50%)	0	3 (50%)	0
Monetary offences	2 (66%)	0	1 (34%)	1 (100%)
Larceny from the person	1 (100%)	0	0	0
Robbery	1 (100%)	0	0	0
Total	172 (66%)	9 (60%)	87 (34%)	6 (40%)

of those convicted of horse stealing or burglary were executed during peacetime. An identical number of those convicted of sheep stealing were executed during both periods.

Sex, Property Offences and the Gallows

In Wales, as in England, males constituted the vast majority of those both sentenced to death and executed for property offences (see Table 5.15). Across the twelve Welsh counties, 87% of those sentenced to death and 93% of those executed for property offences between 1760 and 1830 were male. Females were not only executed in smaller numbers than males, but they were also executed for a smaller range of crimes. Only four females were executed for property offences in Wales over the seventy-year period: two for burglary and one each for sheep- and horse stealing. Males, in contrast, were executed, albeit in small numbers for, housebreaking, highway robbery and monetary offences, among other crimes. Likewise, males constituted 90 and 87% of those sentenced to death and executed for property offences on the Brecon Circuit, with only two females going to the gallows (convicted of burglary and sheep stealing) in the three counties over the seventy-year period (see Table 5.16).

Conclusion

The preceding analysis confirms the claim made by David J. V. Jones, that those convicted of capital crimes at the Wales Courts of Great Sessions during this period were less likely to expiate for their crimes on the gallows than those convicted in English assizes. Between 1760 and 1830, only 13% of those sentenced to death at the Wales Courts of Great Sessions were executed, and in some counties, the percentage of convicted felons who went to the gallows was much lower. In a third of the twelve Welsh counties, the percentage subsequently executed was below 10%. As was the case in England, those convicted of murder could expect to be shown little mercy in Wales, nor could those convicted of infanticide. Convictions for the latter crime, however, were rare: only three females were executed for the crime in Wales between 1730 and 1830, one of whom was convicted on the Brecon Circuit. Executions for rape in the principality were unknown during the period as none of the fifty-four males indicted for the crime across the principality between 1730

Table 5.15 The number and percentage of male and female property offenders sentenced to death, pardoned and executed at the Wales Great Sessions, 1760–1830

Crime	*Executed*		*Pardoned*		*Total*	
	Male	*Female*	*Male*	*Female*	*Male*	*Female*
Sheep stealing	5 (3%)	1 (6%)	152 (97%)	17 (94%)	157 (100%)	18 (100%)
Horse stealing	12 (8%)	1 (9%)	143 (92%)	10 (91%)	155 (100%)	11 (100%)
Burglary	21 (27%)	2 (8%)	100 (83%)	22 (92%)	121 (100%)	24 (100%)
Housebreaking	2 (4%)	0	51 (96%)	9 (100%)	53 (100%)	9 (100%)
Larceny in a dwelling house	1 (3%)	0	29 (97%)	6 (100%)	30 (100%)	6 (100%)
Highway robbery	4 (19%)	0	17 (81%)	0	21 (100%)	0
Fraud and forgery	3 (20%)	0	12 (80%)	1 (100%)	15 (100%)	1 (100%)
Monetary offences	3 (50%)	0	3 (50%)	2 (100%)	6 (100%)	2 (100%)
Robbery	1 (14%)	0	6 (86%)	1 (100%)	7 (100%)	1 (100%)
Cattle stealing	0	0	31 (100%)	2 (100%)	31 (100%)	2 (100%)
Larceny	0	0	9 (100%)	11 (100%)	9 (100%)	11 (100%)
Felony	0	0	1 (100%)	2 (100%)	1 (100%)	2 (100%)
Larceny from the person	0	–	1 (100%)	–	1 (100%)	–
Total	52 (9%)	4 (5%)	555 (91%)	83 (95%)	607 (87%)	87 (13%)

Table 5.16 The number and percentage of males and female property offenders sentenced to death, pardoned and executed at the Brecon Courts of Great Sessions, 1760–1830

Crime	*Executed*		*Pardoned*		*Total*	
	Male	*Female*	*Male*	*Female*	*Male*	*Female*
Sheep stealing	3 (4%)	1 (12.5%)	74 (96%)	7 (87.5%)	77 (100%)	8 (100%)
Horse stealing	4 (8%)	0	47 (92%)	2 (100%)	51 (100%)	2 (100%)
Burglary	4 (13%)	1 (17%)	26 (87%)	5 (83%)	30 (100%)	6 (100%)
Housebreaking	0	0	21 (100%)	2 (100%)	21 (100%)	2 (100%)
Cattle stealing	0	0	13 (100%)	1 (100%)	13 (100%)	1 (100%)
Highway robbery	1 (8%)	0	12 (92%)	0	13 (100%)	0
Larceny in a dwelling house	0	0	8 (100%)	2 (100%)	8 (100%)	2 (100%)
Fraud and forgery	0	0	8 (100%)	1 (100%)	8 (100%)	1 (100%)
Larceny	0	0	3 (100%)	3 (100%)	3 (100%)	3 (100%)
Monetary offences	1 (33%)	0	2 (66%)	0	3 (100%)	0
Larceny from the person	0	0	1 (100%)	0	1 (100%)	0
Robbery	0	0	1 (100%)	0	1 (100%)	0
Total	13 (6%)	2 (8%)	216 (94%)	23 (92%)	229 (100%)	25 (100%)

and 1830 were convicted. This state of affairs reflected on one level a seeming reluctance among Welsh grand and petty jurors for moral crimes to be aired in public and punished through formal legal means. On another, as Katherine Watson has argued, it represented a distinctly gendered response to violent crime in which females were regarded as less significant than males as both victims and offenders.

As in England, those capitally convicted of property offences were significantly less likely to expiate for their crime on the gallows than those convicted of murder. Across Wales, only 9% of those sentenced to death for property offences between 1760 and 1830 paid the ultimate penalty for their crime. On the Brecon Circuit only 6% of property offenders were hanged during the period, the percentage ranging from a low of 2% in Breconshire to a high of 8% in Glamorganshire. The majority of those sentenced to death across Wales during the period had been sentenced to death for sheep stealing or horse stealing, although both were relatively unlikely to be hanged. Rather, those convicted of burglary comprised the majority of those hanged across Wales and on the Brecon Circuit. As was also the case in England, males comprised the majority of those both sentenced to death and executed for property offences across Wales during the period: only eighty-seven females were sentenced to death for property offences in Wales between 1760 and 1830, four of whom were subsequently executed. Two of these females died on the gallows after being capitally convicted on the Brecon Circuit.

The number of property offenders executed across Wales during the period remained relatively static, typically never rising above more than nine per decade apart from a peak in the 1780s where nineteen went to their deaths. Forty of the seventy years between 1760 and 1830 saw no property offenders go to the gallows across the whole principality, while only fourteen saw more than one. On the Brecon Circuit, forty-seven of the seventy years saw no executions for property offences, and only four years saw more than one. Aside from relative peaks in the late 1780s and late 1790s when six and four felons respectively were executed (or 22 and 23% of those sentenced to death), the number of property offenders executed across the Circuit largely flatlined. Indeed, while the mean annual number of property offenders sentenced to death per head of population increased in Wales and on the Brecon Circuit during the first three decades of the nineteenth century, the mean annual number executed actually declined.

The majority of those both sentenced to death and executed across Wales and on the Brecon Circuit had been sentenced to death during

periods of peace. Across Wales, 69 and 66% of property offenders were sentenced to death and executed respectively during periods of peace, while on the Brecon Circuit the respective percentages were 68 and 60% respectively. Those convicted of horse stealing or burglary in particular were much more likely to be executed during periods of peace, largely reflecting the higher numbers of persons indicted and sentenced to death for these crimes during such periods. In contrast, those convicted of monetary offences were more likely to be executed during wartime. Patterns of sentences of death and executions for property offences were also affected across the principality by the cost of living. As the cost of living increased (particularly during periods of peace), more felons were sentenced to death, and more were executed.

Notes

1. *The Cambrian*, 11 April 1812, p. 3. George Hardinge, see George Hardinge, *The miscellaneous works in prose and verse of George Hardinge, Esq*., *vol. 1* (London, J. Nichols, Son, and Bentley, 1818), p. 146.
2. *The miscellaneous works*, *Op. Cit*., p. 148.
3. *The miscellaneous works*, *Op. Cit*., pp. 149–51.
4. David J. V. Jones, 'Life and death in eighteenth-century Wales', *Welsh History Review*, vol. 10, no. 4 (1981), 536–48.
5. Based on the dataset used in John Walliss, 'Wales and the "Bloody Code": The Courts of Great Sessions, 1805–30', *Welsh Historical Review*, vol. 27, no. 1 (2014), 28–52, and David Mossop's list of sentences of death, pardons and executions in Wales, 1735–1804.
6. Simon Devereaux, 'England's "Bloody Code" in crisis and transition: Executions at the Old Bailey, 1760–1837', *Journal of the Canadian Historical Association*, vol. 24, no. 2 (2013), 71–113.
7. Russell Davies, *Hope and heartbreak: A social history of Wales and the Welsh, 1776–1871* (Cardiff, University of Wales Press, 2005), p. 363.
8. David W. Howell, *The rural poor in eighteenth-century Wales* (Cardiff, University of Wales Press, 2000), pp. 177, 213.
9. Melvin Humphreys, *The crisis in community: Montgomeryshire 1680–1815* (Cardiff, University of Wales Press, 1996); Katherine D. Watson, 'Women, violent crime and justice in Georgian Wales', *Continuity and Change*, vol. 28, no. 2 (2013), 245–72, Table 1. These patterns would appear to be long-standing ones: According to Sharon Howard, some 266 persons were indicted for crimes of interpersonal violence at the Denbighshire Court of Great Sessions between 1661 and 1730, just under 30% of all

indictments over the period: Sharon Howard, *Law and disorder in early modern Wales: Crime and authority in the Denbighshire Courts, c. 1660–1730* (Cardiff, University of Wales Press, 2008), Table 1.1.

10. Watson, 'Women, violent crime and criminal justice in Georgian Wales', *Op. Cit.*, Table 1. Catherine Horler-Underwood gives the slightly different figure of 667 murder suspects: Catherine E. Horler-Underwood, 'Aspects of female criminality in Wales, c. 1730–1830: Evidence from the Court of Great Sessions' (PhD thesis, Cardiff University, 2014).
11. Peter King and Richard Ward, 'Rethinking the Bloody Code in eighteenth century Britain: Capital punishment at the centre and on the periphery', *Past & Present*, vol. 228 (2015), 159–205.
12. Horler-Underwood, 'Aspects of female Criminality in Wales', *Op. Cit.*, Table 2.6. On Margaret Jones' case, see pp. 47–48.
13. Watson, 'Women, violent crime and criminal justice in Georgian Wales', *Op. Cit.*, Table 6. Horler-Underwood, Woodward and Kilday provide the figures of 178 and 190 indictments for infanticide over the same period: See 'Aspects of female Criminality in Wales', *Op. Cit.* and Nicholas Woodward, 'Infanticide in Wales, 1730–1830', *Welsh History Review*, vol. 23, no. 3 (2007), 94–125. See also, Anne-Marie Kilday, *A history of infanticide in Britain c. 1600 to the present* (Basingstoke, Palgrave, 2013), Figure 2.3.
14. Woodward, 'Infanticide in Wales', *Op. Cit.*, Horler-Underwood, 'Aspects of female criminality in Wales', *Op. Cit.*; Mark Jackson, *New-born child murder: Women, illegitimacy and the courts in eighteenth century England* (Manchester, Manchester University Press, 1996).
15. Howard, *Law and disorder in early modern Wales*, *Op. Cit.*
16. From a letter sent from George Hardinge to the Bishop of St. Asaph—Patricia Parris, 'Mary Morgan', *Radnor Society Transactions*, vol. 53 (1983), 57–64, p. 63. Hardinge described how Morgan had cut the infant's throat "…nearly severing the head from the neck", adding that she had used …the same knife, and the same use of it, which had been her implement and constant habit in killing chickens", *Op. Cit.*, p. 63.
17. Parris, 'Mary Morgan', *Op. Cit.*, p. 62.
18. Hardinge, *The miscellaneous works*, *Op. Cit.*, p. 66. On the case of Mary Morgan, see Kilday, *A history of infanticide*, *Op. Cit.*, pp. 125–31; Naomi Clifford 'Mary Morgan: "A Provincial Tragedy" (1805)', (2016) http://www.naomiclifford.com/mary-morgan/.
19. See Watson, 'Women, violent crime and criminal justice in Georgian Wales', *Op. Cit.*, Figure 4.
20. Angela Muir, 'Illegitimacy in eighteenth century Wales', *Welsh History Review*, vol. 26, no. 3 (2013), 351–88; Anna Breuton, 'Illegitimacy in south Wales 1660–1870' (PhD thesis, University of Leicester, 2015).

21. Watson, 'Women, violent crime and criminal justice in Georgian Wales', *Op. Cit.*, Table 3. Similarly, none of the three males indicted for rape in Denbighshire between 1761 and 1730 were convicted: See Howard, *Law and disorder in early modern Wales*, *Op. Cit.*
22. Watson, 'Women, violent crime and criminal justice in Georgian Wales', *Op. Cit.*, Table 3.
23. Watson, 'Women, violent crime and criminal justice in Georgian Wales', *Op. Cit.*, p. 265.
24. Richard W. Ireland, 'Putting oneself on whose country? Carmarthenshire juries in the mid-nineteenth century', in Thomas Glyn Watkin (ed.), *Legal Wales: Its past, its future: Essays dedicated to Professor Dafydd Jenkins on his ninetieth birthday* (Cardiff, Welsh Legal History Society, 2001), pp. 63–87.
25. Nicholas Woodward, 'Seasonality and sheep stealing: Wales, 1730–1830', *Agricultural History Review*, vol. 56, no. 1 (2008), 25–47; Nicholas Woodward, 'Horse stealing in Wales, 1730–1830', *Agricultural History Review*, vol. 57, no. 1 (2009), 70–108.
26. See also Nicholas Woodward, 'Burglary in Wales, 1730–1830: Evidence from the Great Sessions', *Welsh History Review*, vol. 24, no. 2, 60–91, *passim*.
27. Judges' reports on criminals TNA, HO 47/8/15 quoted in King and Ward, 'Rethinking the Bloody Code', *Op. Cit.*, p. 174.
28. King and Ward, 'Rethinking the Bloody Code', *Op. Cit.*; Jones, 'Life and death in eighteenth-century Wales', *Op. Cit.* Indeed, that Justices had become too intimately involved with the communities that they visited biannually to dispense justice was one of the criticisms levelled, albeit in measured language, at the Courts of Great Sessions by the 1829 Parliamentary report on the Superior Courts of Common Law:
    No person can visit the same counties twice every year for any length of time, without acquiring that sort of acquaintance with some of the principal inhabitants, and those feelings and impressions with respect to particular practitioners, which are calculated to excite a suspicion, however unfounded, of partiality as often as any cases in which such persons happened to be concerned are presented to court (Royal Commission on the Practice and Proceedings of Superior Courts of Common Law, *Copy of the first report made to His Majesty by the commissioners appointed to inquire into the practice and proceedings of the superior courts of common law*, 1829, IX.1, Appendix, p. 38).
29. For 1750s population estimates, see David Williams, 'A note on the population of Wales, 1536–1801', *The Bulletin for the Board of Celtic Studies*, vol. 8 (1935), 359–63, Table III.

30. Williams, 'A note on the population of Wales', *Op. Cit.*, Table III.
31. King and Ward, 'Rethinking the Bloody Code', *Op. Cit.*, Figure 2.
32. Wales: $r = 0.251$ $p < 0.05$; Brecon Circuit: $r = 0.274$ $p < 0.05$.
33. Wales: $r = 0.551$ $p < 0.01$ (peace); $r = 0.363$ $p < 0.05$ (war); Brecon Circuit: $r = 0.563$ $p < 0.01$ (peace); $r = < 0.399$ $p < 0.05$ (war).
34. Wales: $r = 0.336$ $p < 0.01$; Brecon Circuit: $r = 0.337$ $p < 0.01$.

CHAPTER 6

Conclusion

Over the course of the last four chapters, I have explored the administration of the Bloody Code across four English and three Welsh counties from the mid-eighteenth century until the third decade of the nineteenth century. In this chapter, I will bring the various threads of my analysis together, exploring comparatively the patterns of indictments, prosecutions, verdicts and sentences of death and executions across the seven counties. In Chapters 2 and 3, I drew on two images to describe the criminal justice process in Georgian England: as a series of interconnected rooms with both legally acceptable and illegal exits (King); and as a lottery where a "loser" ended their days on the gallows (Romilly). In this chapter, I will deploy a third image commonly used within the study of the contemporary justice process: that of the "criminal justice funnel".[1] According to this model, the criminal justice system may be envisaged as a funnel, wide at the top and narrow at the bottom. At various stages within the process, key decision makers remove persons from the process, leaving a relatively small number at the funnel's tip to be punished. As we have seen, one of the dominant motifs of the criminal justice process during this period was discretion: decisions made by victims, grand jurors, petty jurors and judges/justices could push those indicted for capital offences further down into the funnel (and ultimately to the gallows) or remove them from it either entirely or with a lesser sentence.

Figure 6.1 shows this funneling process for the four English counties and the Brecon Circuit respectively.

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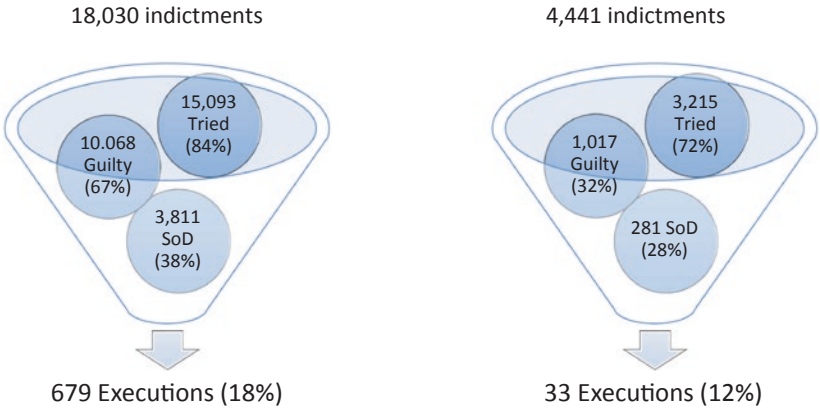

Fig. 6.1 The "criminal justice funnel" for the four English counties and the Brecon Circuit, 1760–1830

As can be seen, there were marked differences between the English and Welsh Courts at every stage of the criminal justice process. Primarily, grand juries on the Brecon Circuit dismissed significantly more of the bills that they considered than did their peers in the four English counties. Whereas English grand juries returned 84% of the bills that they considered as "true bills", grand jurors in Wales only did so just over 70% of the time. Similarly, petty jurors in the English counties were over twice as likely to return guilty verdicts as their peers on the Brecon Circuit. The latter were also twice as likely to return partial verdicts for serious capital offences, thus sparing convicted felons the likelihood of expiating for their crimes on the gallows. This was particularly the case with burglary, where just over one in five (41%) of those indicted for this crime on the Brecon Circuit received a partial verdict compared with just 28% in the English counties. A smaller percentage of felons were also sentenced to death (38%/28%) and, crucially, executed on the Brecon Circuit than in the English counties (18%/12%).

These average "national" patterns, however, disguise differences between the individual counties (see Fig. 6.2). Broadly speaking, each of the four English counties manifested a different pattern of verdicts, capital convictions and executions. Grand jurors in Oxfordshire and

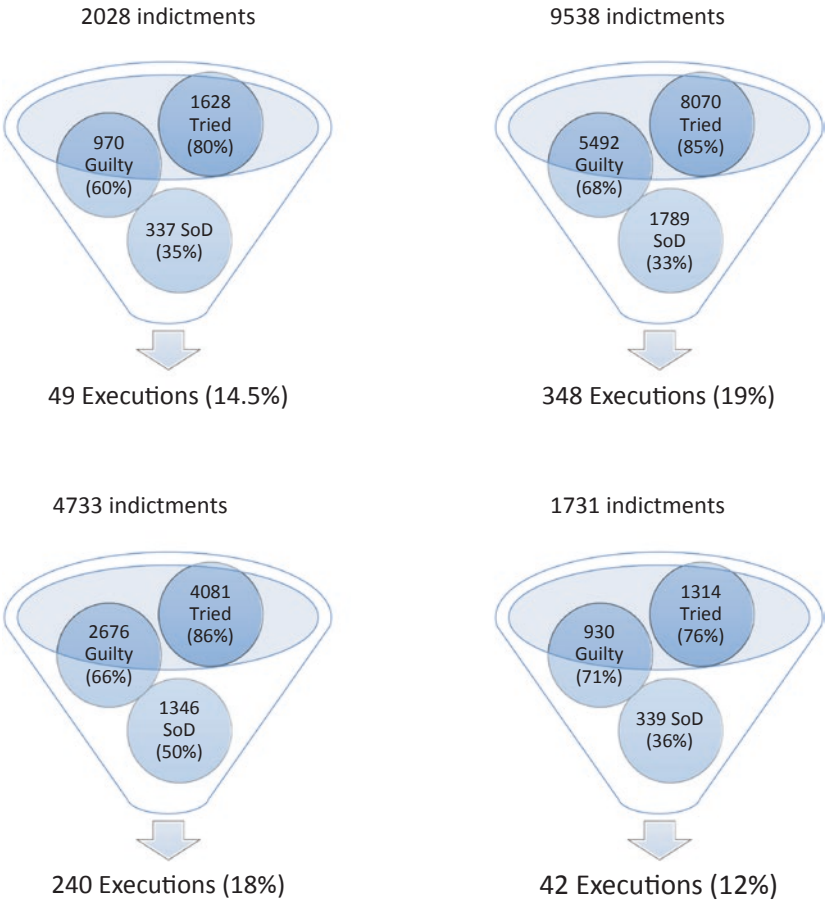

Fig. 6.2 The "criminal justice funnel" for the Cornwall, Kent, Lancashire, and Oxfordshire county assizes, 1760–1830

Cornwall returned the highest percentages of ignoramus bills (24 and 20% respectively). Persons indicted in Cornwall had a low likelihood of being convicted (60%) and capitally convicted (just over a third), and, where capitally convicted, a very low likelihood of being executed (14.5%). In contrast, persons indicted in Lancashire had a high likelihood of facing a trial jury (86%), being convicted (66%), capitally

convicted (50%) and, where capitally convicted, executed (18%). Kent and Oxfordshire fit in the middle of these two extremes. In both counties, indicted persons had a high likelihood of being convicted (68 and 71% respectively) and a less than 40% likelihood of being capitally convicted. However, capitally convicted felons in the former county were much more likely to be executed than in Oxfordshire or, indeed, in any of the three other counties (19%).

Those indicted in Radnorshire were significantly less likely to stand trial and, if tried, to be convicted than those in Breconshire and Glamorganshire (see Fig. 6.3). Only 29% of indicted persons faced a trial jury in Radnorshire, compared with 41 and 47% respectively in the latter two counties. Petty juries in Radnorshire also only returned guilty verdicts in just over one in five of the cases that they considered (44%), significantly fewer than their peers in Breconshire and Glamorganshire (60%). Convicted felons in Breconshire were much more likely than those in the other two counties to receive a sentence of death (30%), although they were the least likely to subsequently be executed (9%). Conversely, the small percentage of felons who were capitally convicted in Glamorganshire (25%) were the most likely to suffer for their crimes on the gallows (13.5%).

Geography—literally where a person was indicted and capitally convicted—was thus an important factor in whether or not they subsequently expiated for their crimes on the gallows. All things being equal, persons indicted in England stood a greater likelihood of being tried, convicted, sentenced to death and executed than those indicted in Wales. Similarly, among the English counties, persons indicted in Cornwall were much less likely to have been convicted, sentenced to death and executed than those in Lancashire and Kent. More broadly, my analysis has confirmed King and Ward's thesis of the centre/periphery dynamic in the administration of the Bloody Code during this period.[2] Between 1760 and 1830, the mean annual number of property offenders per head of population going to the gallows decreased the further that one moved away from the southeast. During the sanguinary heights of the Bloody Code in the 1780s, the mean annual number of property offenders executed in Lancashire was 84% lower than in Kent, while in Cornwall it was 82% lower. Four decades later, the mean annual number executed per head of population across Wales and Lancashire was 85 and 68% lower respectively than in Kent. Of the four English counties, only Cornwall

Fig. 6.3 The "criminal justice funnel" for the Breconshire, Glamorganshire, and Radnorshire Courts of Great Sessions, 1760–1830

executed a comparably number of property offenders per head of population than Wales (0.08 compared with 0.07 respectively).

As far as can be revealed through quantitative analysis, the evidence from the English and Welsh counties discussed above would suggest that the "friction of terrain" on the periphery served to mitigate against the severity of the Bloody Code in practice. This was particularly the case in Wales, where grand and petty jurors returned significantly higher percentages of ignoramus verdicts and partial verdicts than their English peers, ensuring that comparatively few persons were indicted, and that those who were convicted received a partial verdict. Such behaviour was also found in Cornwall, where less than half of those that stood trial were convicted and less than a tenth of those capitally convicted of property offences expiated for their crimes on the gallows. As King and Ward hypothesized, the smaller assize calendars on the periphery (itself possibly a reflection of attitudes towards capital punishment and formal justice more broadly), coupled with such behaviour by grand and petty jurors ensured that relatively few capitally convicted property offenders were executed.

When exactly a felon was sentenced to death during the seventy-year period also determined significantly whether or not they were executed or pardoned. Between 1760 and 1830, the percentage of capitally convicted felons across England and Wales who were subsequently executed declined, in some counties markedly so. Between 1760–1764 and 1825–1829 the percentage of felons dying on the gallows in Kent declined from a third to just 2%, while in Lancashire the percentage declined from a quarter to 5% over the same period. Across Wales, the percentage dying on the gallows also fell dramatically from 15% between 1760–1764 to 3% between 1825–1829. All things being equal, then, a capitally convicted felon was much less likely to have hanged during the 1820s than during the 1760s.

Across England and Wales, the number and percentage of capitally convicted felons who were subsequently executed peaked in the 1780s, before both largely declined for the remainder of the period. In his influential account of capital punishment in England during the eighteenth and nineteenth centuries, V. A. C. Gatrell argued that the Bloody Code collapsed "…suddenly – and I mean suddenly…" in the 1830s because it was no long possible to execute "a consistent proportion of the condemned…if the land were not to be covered in gallows".[3] Another influential account argues that reform of the capital code began at the centre, at the turn of the nineteenth century, as the ideas of Beccaria and the Enlightenment filtered into

political discourse through men such as Romilly.[4] The evidence from the preceding analysis suggests strongly that both these accounts may need rethinking: the end of the Bloody Code—outside London at least—was characterized more as a gradual decline than a sudden collapse.[5] Across the four English counties, the percentage of capitally convicted felons going to their deaths began to decline from at least the final decade of the eighteenth century. By the time that Romilly began his campaign to reform the capital code during the first decade of the nineteenth century, the percentage of felons executed in the four counties was, with the notable exception of Cornwall, already in steep decline. The same was true in Wales, although, as we have seen, capital punishment had never made any significant inroads into Welsh society. The percentage of felons executed in the principality, never large in number, began to decline (albeit with temporary increases) from the late 1770s. In this way, the evidence would suggest that the Bloody Code was increasingly abandoned on the periphery before it was reformed in the centre: the reform of the capital code during the 1830s thus largely served to bring the law into line with how it was already being administered on the periphery.

The third factor influencing whether or not a felon hanged was the type of crime for which they had been convicted. Those convicted of murder were shown little mercy across both England and Wales during this period, as were the relatively few females who were convicted of infanticide. Similarly, those convicted of certain kinds of property offence were more likely to expiate for their crime on the gallows than those convicted of some others. Those convicted of highway robbery and burglary, for example, were relatively more likely to pay the ultimate penalty for their crimes across England and Wales than those convicted of perceived crimes of desperation such as cattle or sheep stealing. Those convicted of forms of fraud and forgery or monetary offences could also expect little mercy, particularly if they had faced justice in Lancashire or Kent.

The final and perhaps most important factor influencing the outcome for a capitally convicted felon, particularly one convicted of a property offence, was their sex. Across England and Wales, females were not only indicted in significantly smaller numbers to males, but they were also less likely to be tried and, if tried, to be convicted. They also tended not to be convicted of serious forms of property offences, such as burglary and highway robbery, which generated concern

among contemporaries and, concomitantly, received little mercy from judges. Between 1760 and 1830, only ninety-eight females were executed for property offences across England and Wales, with only four females suffering this fate across the whole of Wales. Males were not only executed in larger numbers than females for property offences, but were also executed for a broader range of such offences. In a period in which the gallows were seen by the authorities as a form of moral lesson for the lower orders, hanging females was evidently seen as counterproductive: something that might generate pity for the condemned or hostility for the authorities and the law, rather than an effective moral lesson.

Final Thoughts

As a piece of quantitative history, the preceding analysis has only been able to outline the broad contours of the administration of the Bloody Code in England and Wales during this period (what I termed a "satellite-eyed perspective" in the introduction). My hope is that other scholars will fill in some of the detail of my analysis through more qualitative, archival research. More broadly, I hope that the preceding analysis will inspire further research on the administration of justice outside of London and the southeast. As I noted in the introduction, to date the historiography of the Bloody Code has been dominated by accounts of the Old Bailey and the Home Circuit. While this is understandable, it has resulted in a skewing of the historiography towards one particular image of the administration of the Bloody Code that, while similar to that found in the rest of England and Wales, was in many ways singular. While judges and justices may have left comparable types of felons to hang on the periphery as they did at the centre, the experience, common to a Londoner, of frequent executions (in some cases of a dozen or more property offenders at a time) during this period would have been unrecognizable to a contemporary in Wales, Cornwall and some northern counties. Further research on the administration of justice outside of London and the southeast can only enrich our understanding of the role played by the rhetoric and reality of the gallows in Georgian England and Wales.

Notes

1. For a recent discussion of the crime funnel model of the criminal justice process, see, for example, Vincent F. Sacco and Leslie W. Kennedy, *The criminal event: An introduction to criminology in Canada* (fifth edition) (Scarborough, ON, 2011).
2. Peter King and Richard Ward, 'Rethinking the Bloody Code in eighteenth century Britain: Capital punishment at the centre and on the periphery', *Past & Present*, 228 (2015), 159–205.
3. V. A. C. Gatrell, *The hanging tree: Execution and the English people, 1770–1868* (Oxford, Oxford University Press, 1996), pp. 9, 20.
4. See, for example, Leon Radzinowicz, *A history of English criminal law and its administration from 1750, vol. 1: The movement for reform* (London, Stevens & Sons Ltd, 1948).
5. Cf. King and Ward, 'Rethinking the Bloody Code in eighteenth century Britain', *Op. Cit.*

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